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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~182.~~ 1493 215

THE STATE EX REL. THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA AND THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 11, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 782.

THE STATE EX REL. THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA AND THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a No. 6008, Supreme court of Louisiana.

Filed Nov. 16, 1875.
(Signed) M. P. JULIAN,
Deputy Clerk.

State of Louisiana, superior district court for the parish of Orleans.

THE STATE OF LOUISIANA, EX REL. CITIZENS' Bank of Louisiana, *vs.* THE FUNDING BOARD. } No. 26552.

Armand Pitot and G. L. Hall, for plaintiffs and appellants; A. P. Field, attorney-general, and J. B. Cotton and J. Q. A. Fellows, for defendants and appellees.

TRANSCRIPT OF APPEAL, RETURNABLE TO THE SUPREME COURT OF LOUISIANA ON THE THIRD MONDAY OF NOVEMBER, 1875.

1 Superior district court in and for the parish of Orleans, State of Louisiana.

STATE OF LOUISIANA, EX RELATIONE CITIZENS' Bank of Louisiana, *vs.* BOARD OF LIQUIDATION APPOINTED UNDER law No. 13, session of 1874. } No. 26552.

Petition for mandamus.

Filed May 27th, 1875, by
J. J. HANNON, *Dy. Clerk.*

To the honorable the judge of the superior district court for the parish of Orleans.

The petition of the State of Louisiana on the relation of the Citizens' Bank of Louisiana, a corporation created by law and located in the city of New Orleans, respectfully represents that the said Citizens' Bank of Louisiana are holders of sixty bonds of the New Orleans, Mobile & Chattanooga Railroad Company, for the sum of one thousand
2 dollars each, issued under authority of the provisions of act No. 26, approved 17th February, 1869, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile and Chattanooga Railroad Company, in the State of Louisiana," being the Nos. 26 & 32, and continuing from 32 to 90, inclusive, guaranteed by the State of Louisiana, as by certificate of guaranty on the same, subscribed by the governor of the State of Louisiana, by the great seal of the State of Louisiana thereto affixed, and the same attested by the signature of the secretary of the state of the State of Louisiana, as per list hereto annexed, certified by the cashier of the Citizens' Bank of Louisana, thereto annexed for reference, and marked "A."

That your petitioners are also holders of past-due coupons of interest of said bonds, amounting to twelve thousand dollars up to 1st January, 1874, as per list certified by the cashier of the Citizens' Bank of La., and hereto annexed for reference, and marked "B."

That the said bonds and coupons are guaranteed by mortgage
3 to the State of Louisiana, as trustee, conveying to the governor of the State, or his successors in office, all main and branch lines of said railroad, *con* constructed in the State of Louisiana, together with all the real and personal property, equipments, appurtenances, and franchises of said company.

That in consequence of the above mortgage and conveyance, and in obedience to the statute of 17th February, 1869, above mentioned, the said bonds and coupons are guaranteed by the State of La., in favor of all holders thereof, pursuant to the provisions of said statute authorizing said guarantee, and that said bonds and coupons constitute a valid obligation of the State of La. in favor of your petitioner.

That on the 24th day of January, 1874, the act known as the funding act was approved, under the following title: "An act for funding the obligations of the State by exchange for bonds, to provide for principal and interest of said bonds, to establish a board of liquidations, to authorize certain judicial proceedings against it," &c., &c.

4 That the board created by said act, and upon which is imposed the obligation of funding the obligations of the State of Louisiana, has refused to fund the above-described bonds and coupons, held by the Citizens' Bank of Louisiana, notwithstanding amicable demand, to the great loss and injury of your petitioner.

That said bonds and coupons constitute a part of the obligations of the State of Louisiana and of its indebtedness, to be redeemed according to the provisions of said funding act.

That the bonds and coupons presented are not of the class designated as questioned or doubtful by the governor of the State or by act supplementary to the funding act.

That the refusal of the board to fund the bond and coupons presented by petitioner is a violation of the compact entered into between the people of the State of Louisiana and the bondholders.

Wherefore, the premises and annexed affidavit considered, relator prays for a writ of mandamus to be issued, ordering, directing, and commanding the board of liquidators organized under act No. 3,
5 session of 1874, to receive the bonds and coupons herein presented by relator, and to issue therefor the consolidated bonds of the State of Louisiana to the full extent authorized by law.

Relator prays for such other and further orders in the premises as the nature of the case may require or justice and equity demand, and for costs and general relief.

(Signed) JNO. G. GAINES, *Presdt.*
(Signed) ARMAND PITOT, *Atty.*

Affidavit.

John G. Gaines, president of the Citizens' Bank of Louisiana, relator in the above petition, being duly sworn, deposes and says:

That the facts and allegations in the above and foregoing petition are true; that the injury which they sustain and the denial of justice which they experience can only be repaired by the interposition of a writ of mandamus compelling the parties, as prayed for, to do justice in the premises, & that the law has assigned no relief by ordinary
6 means of redressing the wrong and abuse complained of.

(Signed) JOHN G. GAINES, *Presdt.*

Sworn to and subscribed before me on this 27th day of May, 1875.

[SEAL.] (Signed) JOHN LE MONIER,
3d Justice of the Peace, Parish of Orleans, La.

Order

Let a mandamus issue as prayed for, returnable on the 3rd day of June, 1875.

New Orleans, May 27th, 1875.

(Signed) JACOB HAWKINS, *Judge.*

A.—*List of New Orleans, Mobile & Chattanooga Railroad Co., second mortgage 8% sinking-fund bond, guaranteed by State of Louisiana.*

Nos.	26 for $1,000	Nos.	56 for $1,000
	32 " 1,000		7 " 1,000
	3 " 1,000		8 " 1,000
			9 " 1,000
	4 " 1,000		60 " 1,000
			61 " 1,000
	5 " 1,000		2 " 1,000
			3 " 1,000
	6 " 1,000		4 " 1,000
			5 " 1,000
	7 " 1,000		6 " 1,000
			7 " 1,000
	8 " 1,000		8 " 1,000
			9 " 1,000
	9 " 1,000		70 " 1,000
7			
Nos.	40 " 1,000		1 " 1,000
			2 " 1,000
	1 " 1,000		3 " 1,000
			4 " 1,000
	2 " 1,000		5 " 1,000
			6 " 1,000
	3 " 1,000		7 " 1,000
			8 " 1,000
	4 " 1,000		9 " 1,000
	5 " 1,000		80 " 1,000
	6 " 1,000		1 " 1,000
	7 " 1,000		2 " 1,000
	8 " 1,000		3 " 1,000
	9 " 1,000		4 " 1,000
	50 " 1,000		5 " 1,000
	1 " 1,000		6 " 1,000
	2 " 1,000		7 " 1,000
	3 " 1,000		8 " 1,000
	4 " 1,000		9 " 1,000
	5 " 1,000		90 " 1,000

I hereby certify that annexed numbers of bonds, amounting in all to $60,000, are just and true, and that the said bonds are now held by the Citizens' Bank of Louisiana.

(Signed JAS. J. TARLETON, *Cashier.*

New Orleans, 27 May, 1875.

B.—*List of coupons matured to 1st January, 1874, inclusive, on second-mortgage bonds of the New Orleans, Mobile & Chattanooga R. R. Co., guaranteed by the State of Louisiana and held by the Citizens' Bank of Louisiana.*

Bond # 26, coupons due	1 Jany., 1872	$40 00	
do. "	1 July, "	$40 00	
do. "	1 Jany., 1873	$40 00	
do. "	1 July, "	$40 00	
do. "	1 Jany., 1874	$40 00	
			200 00
8 Bonds No. 3290, inclusive, each with 5 coupons $40 each matured as detailed for No. 26, say, 59 bonds, $200			11,800 00
Total coupons due to 1 Jany., 1874			$12,000

I hereby certify that the above is a true and correct statement of past-due coupons due to and including 1st January, 1874.

(Signed) JAMES J. TARLETON, *Cashier.*

NEW ORLEANS, 27 *May*, 1875.

N. B. BY CLERK.—Both of foregoing doc's, A & B, were filed with petition.

Alternative writ of mandamus.—Issued May 28th, 1875.

The State of Louisiana, superior district court for the parish of Orleans.

State of Louisiana to board of liquidators, through Hon. Wm. P. Kellogg, presdt., greeting:

STATE OF LA., EX REL. CITIZENS' BANK OF LA.,
vs.
BOARD OF LIQUIDATION.

9 You are hereby commanded in the name of the State of Louisiana and of the superior district court for the parish of Orleans, to show cause on Thursday, the 3rd day of June, A. D. 1875, at 11 o'clock a. m., why you should not comply with the demand contained in the prayer of the petitioner, (a duly certified copy of which accompanies this writ.)

And herein fail not, under penalty of the law.

Witness the honorable Jacob Hawkins, judge of the said court in the year of our Lord 1875.

[L. S.] (Signed) J. J. HANNON,
Deputy Clerk.

Sheriff's returns to foregoing writ.—Filed May 29th, 1875, by P. E. Burke, deputy clerk.

Received May 28th, 1875, and on the same day, month, and year served a copy of the within alternative writ of mandamus and accompanying petition on board of liquidation, through Hon. Wm. P. Kellogg, president, in person.

Returned same day.

(Signed) S. F. CROZAT,
Dy Sh'ff.

10 *Answer of A. P. Field, Attorney-General.—Filed May 31st, 1875, by J. Burke, clerk.*

Superior district court.

THE STATE OF LOUISIANA, EX REL. THE CITIzens' Bank,
vs.
THE FUNDING BOARD.

And now comes A. P. Field, attorney-general and for the State of Louisiana intervening herein and having an interest in this suit and for the defendants, joining said defendants, and for answer to the rule for a peremptory mandamus, answering, says that said mandamus should not be made peremptory, but should be refused and this suit dismissed.

Because:

1. That the guarantee of the bonds described in the petition of relator was absolutely null and void ab initio, and in violation of the constitution of this State; that said guarantee was given after the adoption of the constitutional amendment limiting the State debt to twenty-five million of dollars, and that limit had at the time of the guarantee been exceeded.

2d. That the act No. 26, approved 17th February, 1869, which
11 authorized the governor of the State to guarantee the second-mortgage bonds of the N. O., Mobile & Chattanooga Railroad to the extent of twelve thousand five hundred dollars per mile, imposed certain conditions-precedent to such guarantee:

1st. That the conditions of the grant should be accepted by the corporation within 90 days after the passage of the act.

2d. That it was to survey and locate the railroad to Houston, Texas, within eight of the acceptance of the conditions of the grant.

3rd. That it was to construct a section of forty miles and have the same in running order within one year from the survey and location of the entire line of railroad.

4th. That it was to construct and lay the rails on the entire road to the Sabine River within three years from such survey and location; and

5th. To Houston, Texas, within six months thereafter; and that in case of failure on the part of said railroad company to comply with the foregoing conditions, or any of them, then the obligations of the State was to cease and determine.

12 That said first section of forty miles was not completed within the time required by the said act No. 26, to wit, the 18th of January, 1871, nor until long afterwards, namely, not before May 13th, 1871, and no second section of forty miles as required by said act has ever been completed, although the time for completing the entire railroad to Houston, Texas, has long since expired. That on the failure to complete the first section of forty miles on or before the 18th of January, 1871, the obligation of the State to guarantee said 2nd-mortgage bonds ceased and determined, and that subsequent enactment authorizing such guarantee was in violation of the constitution, and any guarantee after said lapse was without authority of law and ab initio illegal, null, and void, and a fraud upon the State, and was stricken with nullity from the beginning and is in no sense binding upon the State.

Wherefore respondent prays that the peremptory mandamus be refused, the guarantee of the payment the bonds be declared unconstitu-

tional and absolutely null and void, and that the suit be dismissed at relators' costs.

(Signed) A. P. FIELD,
13 *Attorney General for the State & Board of Liquidation*, &
J. Q. A. FELLOWS.

Continuance.—Extract from minutes.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK of Louisiana, *vs.* THE FUNDING BOARD. } No. 26552.

The rule nisi assigned for this day was by consent of counsel ordered to be continued until the 16th inst.

Subpœna.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK, *vs.* THE BOARD OF LIQUIDATION. } No. 26552.

The State of Louisiana to Gov. H. C. Warmoth, St. Louis street, between Royal and Bourbon streets, New Orleans, La.:

You are hereby commanded to appear in the superior district
11 court for the parish of Orleans on the 16th day of June, in the year of our Lord 1875, at 11 o'clock a. m., to testify the truth, according to your knowledge, in a controversy pending herein between the parties above named; and hereof you are not to fail under penalty of the law.

By order of the court.

(Signed) P. E. BURKE,
Deputy Clerk.

Subpœna.

Superior district court for the parish of Orleans.

STATE OF LA., EX REL. CITIZENS' BANK, *vs.* BOARD OF LIQUIDATION. } No. 26552.

The State of Louisiana to Hon. John A. Campbell, No. 33½ Carondelet street, near Canal st., New Orleans, La.:

You are hereby commanded to appear in the superior district court for the parish of Orleans on the 16th day of June, in the year of our Lord 1875, at 11 o'clock a. m., to testify the truth, according to your knowledge, in a controversy pending herein between the parties above named; and hereof you are not to fail under penalty of the law.

By order of the court.

(Signed) P. E. BURKE,
Deputy Clerk.

15 *Subpœna.*

Superior district court for the parish of Orleans.

STATE OF LA., EX REL. CITIZENS' BANK, *vs.* BOARD OF LIQUIDATION. } No. 26552.

The State of Louisiana to Jeff. Thompson, esq'r., at office of La. Levee Co., Carondelet st., bet. Common and Gravier streets, New Orleans, La.:

You are hereby commanded to appear in the superior district court for the parish of Orleans on the 16th day of June, in the year of our Lord 1875, at 11 o'clock a. m., to testify the truth, according to your knowledge, in a controversy pending herein between the parties above named; and hereof you are not to fail under penalty of the law.

By order of the court.

(Signed) P. E. BURKE.
Deputy Clerk.

Motion for subpœna duces tecum.—Filed June 15th, 1875, by J. J. Hannon, dy. clerk.

Superior district court for the parish of Orleans.

STATE, EX REL. CITIZENS' BANK OF LOUISIANA, *vs.* THE FUNDING BOARD. } No. 26552.

16 On motion of G. L. Hall, of counsel for relator herein, and upon suggesting to the court that this cause is fixed for trial on June 16th, 1875, at eleven o'clock a. m., and upon further suggesting to the court that certain agreements, certificates, and notification of acceptance needed by the relator and absolutely necessary to make out his case, are in the possession of the secretary of state of Louisiana, P. G. Deslonde, and that the same are there in original form:

It is ordered that a subpœna duces tecum issue herein to, and that P. G. Deslonde, secretary of state, do appear in this court on June 16th, 1875, at 11 a. m., and produce the following written documents now on file in his office:

1st. The acceptance by the directors of the New Orleans, Mobile and Chattanooga Railroad of the terms and conditions of the act of the legislature of Louisiana, approved Feb'y 17, 1869, known as act 26, required to be given within ninety days after the passage of the act.

2d. The notice of survey and location of the said railroad, as required to be given and made within eight months after the acceptance of the conditions by the directors.

17 3d. The notice and written evidence of the completion of the first forty miles of said road, as per terms of the said act, within one year from the survey and location of the entire line of the railroad.

4th. The notice of the completion of the first forty miles of the said road, and also the second forty miles.

5th. The agreement of April 20th, 1871, between the parties.

6th. The evidence of the dating, signing, and deliverance, and guarantee of the second-mortgage bonds of the said board, guaranteed by the State of Louisiana, by the governor.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared G. L. Hull, who, being duly sworn, says that all the facts and allegations made and contained in the above motion for a subpœna duces tecum are true and correct; that the production of the documents mentioned therein are required by the relator, the Citizens' Bank of Louisiana, to prove the relator's case on trial to-morrow, and that he knows
18 from personal observation that these documents are in the possession and under the control of P. G. Deslonde, secretary of state, and, further, that he is the attorney for relator herein, and makes this affidavit because of the absence of the president and cashier of said bank from court this morning.

(Signed) G. L. HALL.

Sworn to & subscribed before me this 15th day of June, 1875.
(Signed) J. J. HANNON, *Dy. Clerk.*

Subpœna duces tecum.—Issued 15th June, 1875.

State of Louisiana, superior district court for the parish of Orleans.

STATE, EX REL. CITIZENS' BANK OF LOUISIANA,
vs.
THE FUNDING BOARD. } No. 26552.

To P. G. Deslonde, secretary of state:

You are hereby commanded, in the name of the superior dis-
19 trict court for the parish of Orleans, to bring with you, and produce in open court, on Wednesday, the 16th day of June, 1875, at the hour of eleven a. m., to be used in evidence at the trial of the above-entitled case by the relator therein—

1st. The acceptance by the directors of the New Orleans, Mobile and Chattanooga Railroad of the terms and conditions of the act of the legislature of Louisiana, approved Febr'y 17th, 1869, known as act 26th, required to be given within ninety days after the passage of this act.

2d. The notice of the survey and location of the said railroad as required to be given and made within eight months after the acceptance of the conditions by the directors.

3d. The notice and written evidence of the corporation of the first forty miles of said road, as per terms of the said act, within one year from the survey and location of the entire line of the railroad.

4th. The notice of the completion of the first forty miles of the said railroad, and also the second forty miles.

5th. The agreement of April 20th, 1871, between the parties.

6th. The evidence of the dating, signing, and delivering, and
20 guarantee of the second-mortgage bonds of the said road, guaranteed by the State of Louisiana, by the governor.

And herein you are not to fail under penalty of the law.

Witness the honorable Jacob Hawkins, judge of the said court, this 15th day of June, 1875.

(Signed) J. J. HANNON,
Deputy Clerk.

Sheriff's return to foregoing subpœna duces tecum.—Filed by P. E. Burke, deputy clerk, June 16th, 1875.

Received June 15th, 1875, and on the 16th day of same month and year I served a copy of the within subpœna duces tecum on P. G. Deslonde, secretary of state, in person.

Ret. same day.

(Signed) EUGENE MESTIER,
Dy. Sheriff.

Continuance.—Extracts from the minutes.

STATE OF LA., EX REL. CITIZENS' BANK OF LA., *vs.* THE FUNDING BOARD. } No. 26552.

21 The rule nisi assigned for this day was by consent of counsel ordered to be continued until the 22d inst.

Subpœna duces tecum.—Issued 21st June, 1875.

State of Louisiana, superior district court for the parish of Orleans.

STATE, EX REL. CITIZENS' BANK OF LOUISIANA, *vs.* THE FUNDING BOARD. } No. 26552.

To P. G. Deslonde, secretary of state:

You are hereby commanded, in the name of the superior district court for the parish of Orleans, to bring with you, and produce in open court, on Tuesday, the 22d day of June, 1875, at the hour of 11 a. m., to be used in evidence at the trial of the above-entitled case by the relator therein—

1st. The acceptance by the directors of the New Orleans, Mobile and Chattanooga Railroad of the terms and conditions of the act
22 of the legislature of Louisiana, approved Feb'y 17th, 1869, known as act 26th, required to be given within ninety days after the passage of this act.

2d. The notice of survey and location of the said railroad, as required to be given and made within eight months after the acceptance of the conditions by the directors.

3d. The notice and written evidence of the completion of the first forty miles of said road, as per terms of the said act within one year from the survey and location of the entire line of the railroad.

4th. The notice of the completion of the first forty miles of the said road, and also the second forty miles.

5th. The agreement of April 20th, 1871, between the parties.

6th. The evidence of the dating, signing, and delivering, and guarantee of the second-mortgage bonds of the said road, guaranteed by the State of Louisiana, by the governor.

And herein you are not to fail under penalty of the law.

Witness the honorable Jacob Hawkins, judge of the said court, this 21st day of June, 1875.

(Signed) P. E. BURKE,
Deputy Clerk.

23 *Sheriff's return to foregoing subpœna duces tecum.—Filed by P. E. Burke, deputy clerk, June 22, 1875.*

Received June 21, 1875, at 1.10 p. m., and on the same day of the same month and year served a copy of the within subpœna duces tecum on P. G. Deslonde, secretary of state, through N. Durand, assistant secretary, in person.

Retd. same day.

(Signed) J. DUPUY,
Dy. Shff.

Supplemental and amended answer of the State of Louisiana.—Filed June 22d, 1875, by J. J. Hannon, deputy clerk.

Superior district court.

STATE OF LA., EX REL. CITIZENS' BANK,
vs.
THE FUNDING BOARD. } No. 26552.

And for further and amended answer the State of Louisiana and the defendants say:

That the bonds presented in this case and the funding of
24 which are claimed are not included among the obligations permitted to be funded by act No. 3 of 1874, and are not the bonds of the State.

Wherefore defendants pray as in the original answer and for general relief.

(Signed) A. P. FIELD,
Attorney-General.

(Signed) J. Q. A. FELLOWS &
J. B. COTTON,
Of Counsel.

Bill of exceptions.—Filed June 22d, 1875, by J. J. Hannon, deputy clerk.

Superior dt. ct., parish of Orleans.

CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF AUDIT, &C. } No. 26552.

Be it remembered that on the trial of this cause the defendants offered to prove the time in which the first section of forty miles of the N. O., M. & C. Railroad Co. was completed.

To which the plaintiffs, through their attorneys, excepted, on the ground that the State cannot be permitted to contradict the written evidence resulting from its own bonds, under the solemn sanc-
25 tion of the law. That said bonds make full proof that all the requisites of the law have been fulfilled, and the written evidence so furnished by the State to bona-fide holders unconnected with its administration cannot be contradicted by oral testimony to inovate the party from the fulfilling of its obligations made said persons. That such testimony is refutated by the law of evidence and its object contrary to justice and good morals.

(Signed) JACOB HAWKINS, *Judge.*

Note of evidence.—Filed June 22d, 1875, by P. E. Burke, deputy clerk.

Present in open court, Jacob Hawkins, judge; A. Pitat, plaintiff's; A. P. Field, J. Q. A. Fellows, defendant's.

(1.) Offered in evidence by counsel for plaintiff: The eighty bonds of the railroad guaranteed by the State bonds, with coupons attached.

26 Objection to the introduction of the bonds on the ground of their not being bonds of the State.

Objection overruled by the court.

It is admitted by counsel that the other bonds will be filed by their numbers.

Also admited that the bonds sued on were offered to the funding board, and were refused.

Also admitted that the New Orleans, Mobile and Chattanooga Railroad Company are insolvent.

Offered by Mr. Fellows: Certificate of G. W. R. Bayley, as to the completion of forty miles of the road, subject to same bill as above.

Testimony filed & taken in open court June 22d, 1875.

27 To his excellency W. P. Kellogg, president of the funding board:

Herewith please find submitted the following obligations of the State, which I wish exchanged for new consolidated bonds, under the provisions of act No. 3 of 1874, (funding bill.)

Qua. [illegible]	Denomination.	Date of Interest	Fractional part of coupons to be funded.	Aggregate amount.	Acts of the legislature authorizing the issue of bonds and warrants.
Sixty	Bonds	....		60,000 00	Acts approved 17 Feby., 1869, and 21st Feby., 1870, as guarantee on bonds of New Orleans, Mobile & Chattanooga R. R. Co.
No. 26	$1,000	....		.....	
@ 300	"	....		.....	

With 300 coupons @ $40 attached.

(Written across the face in red ink:)

This application, together with the bonds and obligations of the State described herein, to be deposited with the fiscal agent of the State, at the New Orleans National Bank, No. 54 Camp streets, New Orleans, between the hours of 10 and 12 m.

Dated New Orleans, 20th May, 1875.

(Signature) JAS. J. TARLETON, *Cashr.*

P. O. address: Citizens' Bank of La., New Orleans.

(Indorsed:) Obligations submitted by Citizens' Bank of La. accepted. Rejected, the new bonds in exchange for yours "accepted;" obligations will be ready for delivery on the day of 187 . Fiscal agent of the State. Filed June 22d, 1875. (Sgd.) P. E. Burke, dy. clerk.

28 1,000.] UNITED STATES OF AMERICA. [1,000.

No. 26. No. 26.

Second mortgage bond of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana.

Know all men by these presents, that the New Orleans, Mobile and

Chattanooga Railroad Company, a corporation of the State of Alabama, is indebted to the State of Louisiana, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which the said company promises to pay to the bearer on the first day of July, in the year one thousand nine hundred and fifteen, at the agency of said company in the city of New York, with interest from the first day of July, one thousand eight hundred and seventy, at the rate of eight per cent. per annum, payable semi-annually, at said agency, on the first days of January and July in each year, on the presentation and surrender of the annexed coupons. This bond is one of an issue, all of same denomination, and numbered consecutively, authorized by said company, and to be guarantied by the State of Louisiana to an amount not exceeding, in the aggregate, twelve thousand five hundred dollars per mile for each and every mile in length of the main line and
29 such of the several branch lines of railroad of the said company to be constructed in that part of the State of Louisiana lying west of the Mississippi River, in respect to which the State of Louisiana has to such extent agreed to guaranty the bonds of said company, in and by the acts of the general assembly of said State relating thereto, approved February 17th, 1869, and February 21st, 1870. The payment of the principal and interest of all of said bonds is secured by a mortgage, bearing date July 1st, 1870, executed by said company to the governor of the State of Louisiana as trustee, which conveys to him and his successors in office all the hereinabove-mentioned main and branch lines of railroad, which the said company has constructed, or shall hereafter construct, together with all the real and personal property, equipments, appurtenances, and franchises of said company, acquired, or which may be hereafter acquired, for said railroads, as in said mortgage fully described and set forth: the lien created thereby being subject to the prior lien of a deed of trust, bearing date March 15th, 1870, executed by said company to Oakes Ames and Edwin D. Morgan, trustees, to secure the payment of the principal and interest of an issue of first-mortgage bonds of said company, to an amount not exceeding twelve thousand five hundred dollars and the interest that may accrue thereon upon each and every mile of the said railroads. Said
30 mortgage, to secure the payment of this and said other guarantied bonds, provides that a sinking-fund of one-half of one per centum of the total amount of the principal of all of said bonds which shall, up to the time of such payment, have been guarantied by the State of Louisiana, whether outstanding or surrendered to the trustee for the purposes of the sinking-fund, shall be annually paid by said company to said trustee, (beginning July 1st, 1875,) and invested in said bonds at a price not exceeding par and accrued interest, said company reserving the right to have drawn, by lot, from the bonds outstanding, when and in manner prescribed in said mortgage, the number of bonds required for the sinking fund; and on not less than forty-five days' notice being given of the numbers drawn, and that said trustee will pay the principal and interest of the same, on presentation, the interest on the bonds so drawn will cease. In case default shall be made in the payment of the interest of said bonds, or any of them, or of the said sinking fund, or any part thereof, and the same shall remain in arrear for sixty days after becoming due and being demanded of said company, the principal of all the bonds secured by the said mortgage, and then outstanding, shall, upon the expiration of
31 said sixty days, become due and payable. This bond may be registered on the books of said company, at said agency, at the

option of the holder, after which the same shall be transferable only by the endorsement of such transfer on the bond, by an authorized agent of the company, unless it shall be transfer'ed and assigned to bearer, when it may pass by delivery. It is agreed by said company with the holder of this bond, in case of any default in payment hereof, that the said company will waive, and hereby waives, the benefit of any extension, stay, or appraisement laws now existing, or which may hereafter exist, in any of the United States.

This bond shall not be obligatory until the certificate of guaranty her'on printed shall have been subscribed by the governor of the State of Louisiana, the great seal of said State thereto affixed, and the same attested by the signature of the secretary of state of said State.

In witness whereof the said company has caused this bond to be executed, its corporate seal to be hereunto affixed, and attested by the signatures of its president and treasurer, this first day of July, in the year one thousand eight hundred and seventy.

JAMES A. RAYNOR,
President.

32 W. S. WILLIAMS, *Treasurer.*

[SEAL.] Attest:
JOHN J. HOWELL, *Secretary.*

Coupons.

40.] 90. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1915, for semi-annual interest on its 2d-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 89. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1915, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 88. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1914, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

33 40.] 87. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1914, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 86. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1913, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 85. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1913, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 84. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1912, for semi-annual interest on 2nd-mortgage
34 bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 83. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1912, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 82. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1911, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 81. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1911, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 80. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1910, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

35 40.] 79. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1910, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 78. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1909, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 77. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1909, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 76. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1908, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

36 40.] 75. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1908, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 74. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1907, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 73. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1907, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 72. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1906, for semi-annual interest on the 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

37 40.] 71. [40.

The New Orleans, Mobile & Chattanoaga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1906, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 70. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1905, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 69. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1905, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 68. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1904, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

38 40.] 67. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1904, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 66. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1903, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 65. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1903, for semi-annual interest on its 2d-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 64. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1902, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

39 40.] 63. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1902, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 62. [40

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1901, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 61. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1901, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 60. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1900, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40 40.] 59. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1900, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 58. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1899, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 57. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1899, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 56. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1898, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

41 40.] 55. [40.

The New Orleans, Mobile, & Chattanooga Railroad Company pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1898, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 54. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1897, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 53. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1897, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 52. [40.

The New Orleans, Mobile & Chattanooga Railroad Co npany will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1896, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

42 40.] 51. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1896, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 50. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1895, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 49. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1895, for semi-annual interest on 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 48. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1894, for semi-annual interest on its 2nd-mortgage
43 bond, guarantied by the State of Louisiana, No 26.

W. S. WILLIAMS, *Treasurer.*

40.] 47. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1894, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 46. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, on the 1st day of July, 1893, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No 26.

W. S. WILLIAMS, *Treasurer.*

40.] 45. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1893, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 44. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1892, for semi-annual interest on its 2nd-
44 mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 43. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1892, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 42. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1891, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 41. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1891, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

45 40.] 40. [40

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1890, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 39. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1890, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 38. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1889, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.
W. S. WILLIAMS, *Treasurer.*

40.] 37. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on
46 the 1st day of Jan., 1889, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 36. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1888, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 35. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1888, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 34. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1887, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

47. 40.] 33. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1887, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 32. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1886, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 31. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1886, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 30. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on
48 the 1st day of July, 1885, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 29. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1885, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 28. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1884, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 27. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1884, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

49 40.] 26. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1883, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 25. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1883, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 24. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1882, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer*.

40.] 23. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay to the bearer, at its agency in the city of New York, forty dollars
50 on the 1st day of Jan., 1882, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 22. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1881, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 21. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st of Jan., 1881, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 20. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1880, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

51 40.] 19. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1880, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 18. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1879, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 17. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer at its agency in the city of New York, forty dollars on the 1st day of Jan., 1879, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 16. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1878, for semi-annual interest on its 2nd-mortgage
52 bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 15. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1878, for semi-annual on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 14. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1877, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

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W. S. WILLIAMS, *Treasurer.*

40.] 12. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1876, for semi-annual interest on its 2nd-mortgage
53 bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 11. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1876, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 10. 40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1875, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 9. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1875, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

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The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1874, for semi-annual interest on its 2nd-mort-
54 gage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

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The New Orleans, Mobile Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1874, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 6. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1873, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 5. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1873, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 4. [40.

The New Orleans, Mobile & Chattanooga Railroad Company
55 will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of July, 1872, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

40.] 3. [40.

The New Orleans, Mobile & Chattanooga Railroad Company will pay the bearer, at its agency in the city of New York, forty dollars on the 1st day of Jan., 1872, for semi-annual interest on its 2nd-mortgage bond, guarantied by the State of Louisiana, No. 26.

W. S. WILLIAMS, *Treasurer.*

(Endorsed:) The New Orleans, Mobile & Chattanooga Railroad Company second-mortgage eight per cent. sinking-fund bond, guaranteed by the State of Louisiana, No. 26. 1,000. Interest payable on the 1st days of January and July in each year in New York.

56 Registered in name of
18 *Tran'r agt.*
Registered in name of
18 *Tran'r agt.*
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18 *Tran'r agt.*
Registered in name of
18 *Tran'r agt.*

57 The payment of the principal of the within bond when due, and of the interest thereon as it accrues, is guaranteed by the State of Louisiana, pursuant to the provisions of the act of the general assembly of said State, authorizing such guaranty.

In testimony whereof I, H. C. Warmoth, governor of the State of Louisiana, have subscribed this certificate, and affixed the great seal of said State hereto, which is attested by the signature of the secretary of state, at the city of New Orleans, this 31st day of December, in the year one thousand eight hundred and seventy.

[SEAL.] H. C. WARMOTH,
Governor of the State of Louisiana.

Attest:

GEO. E. BOVEE,
Secretary of State.

The New Orleans, Mobile and Chattanooga Railroad Company will pay the within bond and the coupons thereto attached, or either or any of them, at or after maturity, according to the tenor of the bond, or, at the option of the holder, in the sterling gold coin of Great Britain, at the rate of two hundred pounds (£200) for the principal of said bond, and seven pounds (£7) for each coupon, on the presentation
58 thereof at the agency of said company in the city of London, England, and in either and every case, all payments on said bond or coupons, however or wherever made, shall be free from United States Government tax.

In witness whereof the said company has caused its corporate seal to be affixed to this stipulation, and the same to be attested by the signature of its secretary, at the city of New York, this first day of July, 1870.

[SEAL.] JNO. J. HOWELL, *Secretary.*

Superior dist. court. Filed June 22d, 1875.

J. J. HANNAN,
Dy. Clk.

59 *Testimony of Mr. John G. Gains for Plft.*

By Mr. Pitot:

Q. You are president of the Citizens' Bank?

A. Yes, sir.

Q. Do you know that those bonds sued on in this case belong to the Citizens' Bank?

A. Yes, sir.

Q. Will you say how they came into the possession of the bank, and when?

A. We bought them from the Chattanooga Railroad Company on the 23rd April, '72.

Q. Where were those bonds when you bought them?

A. They were in New York; we bought them through our agent there.

Q. You paid a consideration for them.

A. Yes, sir.

Cross-examination by A. P. Field:

Q. When did you buy those bonds?

A. In New York on the 23d of April, 1872.

Q. What did you give for them?

60 A. Thirty-five thousand dollars ($35,000) for the 60 bonds.

Testimony of Mr. Dodge for def.

Q. Were you contractor on the Opelousas Railroad between New Orleans and Donaldsonville?

A. Yes, sir.

Q. In what year?

A. During 1870, '71, '72, and '73.

(Objection to the introduction of this evidence by Mr. Pitot, on the ground that, under the law, the bonds which have been issued and guaranteed by the State make full and complete proof by themselves that all the requisites of the law have been performed. Objection overruled by the court. Bill of exception reserved to counsel for plft. Certificate introduced.)

Q. Were you contractor on that road described in this certificate?

A. Yes, sir.

Q. What was your contract about?

A. Bridging.

Q. Any track-laying?

A. I was associated with the track-laying.

Q. Can you tell when the first forty miles were completed?

61 A. Between the first and the fifth of April, 1871.

Q. When was it completed to the bayou Lafourche?

A. On the morning of the 17th of May, 1875.
Q. When were the ten miles completed beyond that?
A. In March, 1873.
Q. Has there been any completed beyond that?
A. About half a mile.
Q. Is that all?
A. Yes, sir.
Q. Up to the present time?
A. Yes, sir. I was out on the road in February last. All finished up to that time.
Q. Do you know anything of the certificate of Dan Blake?
A. I have seen it.
Q. Does it correspond with that?
A. Yes, sir.
Q. As to the date of its issue, what do you know?
A. Not before the first of April.

By the att'y-gen.:

Q. Are you certain about the dates?
A. Yes, sir.

62 Q. That the first forty miles were not completed until between the first and fifth of April?

A. I was at the end of the track on the first of April, 1871, and the forty miles were not completed. I was there on the fifth, and it was completed.
Q. It was then completed some time between the first and fifth of April?
A. Yes, sir.
Q. In 1871?
A. Yes, sir.

Testimony filed June 22, 1875. P. E. Burke, dep. clerk.

Continuance.—Extract from the minutes.

STATE OF LA. EX REL. CITIZENS' BANK OF LA.
vs.
THE FUNDING BOARD. } No. 26552.

The rule nisi for a writ of mandamus came on for trial.
A. Pitot and G. L. Hall, for the relator.
A. P. Field, attorney-general, J. B. Cotton and J. Q. A. Fellows, for respondent.

63 After hearing pleadings and evidence, the same was continued for argument.

Superior dist. court.—Filed November 1st, 1875. Jno. J. Hannan, dep. cl'k.

Reasons for judgment.

THE STATE OF LOUISIANA EX REL. CITIZENS' BANK OF LOUISIANA.
vs.
THE BOARD OF LIQUIDATORS.

Relator is the holder of certain bonds, sixty in number, of the second-mortgage bonds of the New Orleans, Mobile, and Chattanooga Railroad

Company, for $1,000 each, with coupons attached, alleged to have been issued under authority of the provisions of act No. 26, approved February 17, 1869, and guaranteed by the State of Louisiana, which the relator alleges the board of liquidators, appointed under the act approved January 24, 1874, has, though requested, refused to fund. To compel said board of liquidators to fund said bonds and forfeit the coupons, is the object of this writ of mandamus.

The board of liquidators, through the attorney-general, who
64 also appears for the State as intervenor, resists the writ.

The case has been tried and argued with marked ability, as from its importance, not only in the amount, but the legal questions involved, it deserves. Some of the issues involved are without judicial precedent, requiring careful consideration of the language and intent of statutes; others involve questions of constitutional power never to be lightly treated: and, though examined and to be determined under the summary proceedings of mandamus, involve the interests of the people of the State on the one hand, and the holders of bonds on the other, in principal and interest to an extent of over a million of dollars. These considerations have led the court not only to an attentive examination of the case in its various bearings, but to guard against hasty conclusion. The relator, the Citizens' Bank, claims that it purchased the bonds for a valuable consideration; that the guarantee of the State was a superinducing cause of their purchase; also, in argument, though not in the petition, that the drawer of the bonds, the railroad company, is insolvent, and that unless the remedy sought against the funding-
65 board be granted, the bonds will prove a total loss to the relator.

The funding-board as well as the State, on the other hand, contend that these bonds are of a class not intended to be embraced in the funding act; and, moreover, were not, for reasons specially pleaded, legally issued, so far, at least, as their guarantee by the State is concerned. The first section of the act of February, 1869, under which it is alleged the bonds were issued, authorized the New Orleans, Mobile and Chattanooga Railroad Company "to make and issue from time to time, as hereinafter provided, its bonds, to be known as second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana, of such denominations as the company may elect, but to an amount not exceeding, in the aggregate, $12,500 for each and every mile in length of the main line of the railroad westerly from the city of New Orleans and within the State of Louisiana, which said company shall construct." Two guarantees are provided for the payment of the bonds so issued. The first is provided in the third section of the act which declares "that the payment
66 of the principal and interest of such bonds shall be secured by a mortgage to be executed by said company to the governor of the State. The said mortgage shall be a lien upon the whole of the said main line of railroad of said company within the State of Louisiana, and upon all right of way, road-bed, etc., real and personal estate within the State of Louisiana: but the lien of said mortgage shall be subject and subordinate to a prior lien in favor of a first mortgage to the extent of $12,500 per mile."

To enforce the guarantee arising from this second mortgage, it is provided, in the eight section, "That the said mortgage to the governor of the State of Louisiana shall contain a further provision, that in case default should be made in the payment of the interest of said bonds, or any of them, or of the said sinking-fund, or any part thereof, and the same shall remain in arrear for sixty days after becoming due, and be-

ing demanded of the said company, the principal of all the bonds secured by said second mortgage and then outstanding, shall, upon the expiration of said sixty days, become due and payable, and said mortgage shall contain suitable provisions for the sale of said railroad,
67 and appurtenances, by the trustee in case of default in the condition of said mortgage."

The provisions of this section constitute what may be termed the first guarantee, a mortgage on the property of the railroad company, the drawer of and principal obligor on the bonds. The second and additional guarantee is that to be furnished (under certain conditions) by the State, and authorized by the eighth section of the act, which provides "That when the said second mortgage shall have been so delivered, approved, and recorded, and one continuous portion or section of forty miles in length of the main line of railroad within the State of Louisiana shall have been constructed by the company and the rails laid thereon, the company may deliver to the governor of the State of Louisiana $500,000, or £100,000, of such second mortgage bonds, and the governor shall thereupon subscribe a certificate, to be written or printed upon each of said bonds, in the following words: The payment of the principal of the within bond when due, and of the interest thereon as it accrues, is guaranteed by the State of Louisiana, pursuant to
68 the provisions of the act of the general assembly of said State, authorizing such guarantee, and shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the secretary of state, and the bonds shall then be delivered to the company for its general uses and purposes authorized by its charter." The seventh section provides for the guarantee by the State of additional bonds "upon the construction of each additional section or portion of forty miles in length of said main line of railroad." The guarantee of the State by the eight' and ninth sections is conditioned in the actual construction of forty miles, and other sections of like extent. By the twelfth section it is also provided, and made a condition-precedent to the State's guarantee, that the survey and location of said road shall be made within a certain time, and portions and the whole of said road be completed within certain limits in time. It declares "That said company shall cause the survey and location of the whole of said main line of its railroad within the State of Louisiana
69 to be completed within eight months after its acceptance of this act, hereinafter provided for, and shall cause a section of at least forty miles thereof to be constructed and the rails laid thereon within twelve months after such survey and location shall have been made, and in case of the failure of said company to survey, locate, and construct the said main line of said railroad within the State of Louisiana, in the manner and within the time limited in this section of this act for such survey, location, and construction, the obligation of the State of Louisiana by virtue of this act to guarantee the second mortgage bonds of said company (as in said act provided) for or upon that portion of the said main line of railroad not constructed within the time limited shall cease and determine, and none of said second mortgage bonds for or upon that portion of said main line of railroad, not constructed within the time limited, shall be guaranteed by the State of Louisiana." It thus appears that two separate and distinct guarantees are provided: one a mortgage executed by the obligor, the railroad company, on its property and franchises, absolute and unconditional;
70 the other the guarantee which the State agrees to give on certain specified conditions to the performance by the railroad company,

and which necessarily includes the general condition applicable to all suretyship, the default of payment by the principal.

It also follows, under the law of suretyship, that in case the State, under her guarantee, should be forced to pay any of the coupons or eventually the bonds, she, as such surety, would hold the same as creditor of the drawer and mortgager, with the same rights against the railroad company as any holder. This point is now referred to as an important consideration in some questions involved in an issue to be hereafter considered. And while considering the text of the statute, it may be here noticed that while by the sixth section, on continued default by the company (after sixty days from demand) in payment of any of the interest-coupons, it is enacted that the principal of all the bonds shall at once become payable, and provision is made in such contingency "for the sale of said railroad and appurtenances by the trustees," yet it does not appear from any provisions of the act that even on such
71 default by the company, the guarantee of the State requires of her an immediate payment. The various defenses pleaded by the State may be classed under three heads: First. That pleaded in the supplemental answer, that the bonds sought to have funded were not included among the obligations permitted to be funded by act No. 3 of 1874. Second. That the guarantee of the bonds by the State was null ab initio, because said guarantee was given after the adoption of the constitutional amendment limiting the State debt to $25,000,000. Third. That certain conditions-precedent to the granting of the guarantee by the State, to wit, the acceptance of the grant by the corporation within ninety days after the passage of the act, as provided in the fourteenth section; the survey and the location of the road to Houston, Texas, within eight months after the acceptance of the conditions of the grant; the completion of forty miles of the road in one year from the survey; to the Sabine within three years; and to Houston, Texas, within six months thereafter, had failed; that there was no legal acceptance
72 of the grant, nor was there any portion of the road built within the specified time. On the other hand, it is contended by the plaintiff that these bonds fall within the provision of the funding act, are obligations intended to be funded, and that all the conditions required of the company were fully complied with; also that the relator is a third innocent holder for valuable consideration, and as such is unaffected by any failure of conditions in the original issue.

Though these are the issues presented and argued by the learned counsel, there is another question, which, as the pleadings stand, requires, in the opinion of the court, consideration. It has been seen that the obligation of the State, whatever it may be, is a conditional one. The State cannot be held bound, except on default of payment by the road. The funding act, as well as the constitutional amendment regarding the funding of the State debt, look clearly to such obligations as the State may beyond all question be bound for; the railroad company, the drawer of the bonds, is unquestionably primarily liable. In case of its failure either to pay a matured coupon, or the bonds
73 themselves, provision is made by the sixth section for disposition of the mortgaged property. The whole tenor of the act indicates that the State is bound only in default of the company to pay in part or whole its obligations. Such being the conditional liability of the State, it appears to the court that it should be alleged as a ground for a writ of mandamus, and established by evidence, that demand of payment of the matured coupons had been made in vain on the company; and,

further, that the mortgage is valueless, and the company neither has now nor will have means to meet the bonds.

And this especially as by the provisions of the funding act (sec. 8) these bonds, should the mandamus be decreed, would have to be destroyed. By this destruction, the principal obligor would be entirely released from liability on them, and in no manner made liable to the State for the State bonds to be issued by the funding board in place thereof. The court has looked in vain in relator's petition for any such obligation, either of demand on the railroad company for payment or default of payment. No absolute or partial insolvency of the company is
74 anywhere alleged, no allegation in fact by which it would appear that the alleged guarantee of the State has] or ever will become executory. It may be indeed true, but it is not so alleged, and the court, especially in enforcement of summary proceedings, must direct its action by the record. True there appears in the minutes of testimony an admission by counsel "that the New Orleans, Mobile and Chattanooga Railroad Company is insolvent," but to what extent or whether beyond all future possible recovery, in whole or in part, the admission does not state. What extent the admission was intended by counsel to have toward removing the above objections does not appear.

It might be questioned whether the objection could be waived by the attorney-general. The court is of opinion that without an allegation of proper demand of payment of coupons, and at one of the places fixed in the second section and in default of payment, or some direct allegation of entire insolvency, the conditional obligation of the State cannot be considered as accrued; as, however, counsel of neither side seemed to so consider it, as no reference thereto was made either on trial or in briefs furnished, the court has considered the other points which are
75 raised by the pleadings.

As to the objection pleaded by the supplemental answer, that these bonds are not included among the obligations permitted by the funding act, this question must be determined by considering the language and intent of the first section of the act, which declares its object to be for the purpose of consolidating and reducing the floating and bonded debt of the State. Does the bonded debt thus referred to include a debt for which the State is only conditionally liable? If so, doubtless the bonds in controversy are covered by the funding act. But were bonds, the payment of which were only guaranteed by the State, not drawn or executed by the State, so considered by the legislature, or can they in a true sense be termed "bonds of the State?" They are not so termed or described in the act of 1869, authorizing their issue. On the contrary, they are the second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, and to specially express the relation of the State to them, the expression "guaranteed by the State of Louisiana" is added.

The very condition of guarantee shows that the real obligation
76 is due by another; it is an obligation of another, not of the guarantor. The authority to issue the bond is given by the legislature exclusively to the railroad company. Says the statute, "That the New Orleans, Mobile and Chattanooga Railroad Company, a corporation of the State of Alabama, be, and it is hereby, authorized to make and issue from time to time, as hereafter provided, its bonds."

A strict, and the court thinks a reasonable, interpretation of the words of the first section, "the floating and bonded debt of the State," would scarcely include a debt not previously and absolutely incurred by the State, and regarding which the State is to be only conditionally and

eventually liable. If possible, still stronger is the language of the third section, which declares that "the consolidated bonds shall be exchanged for the valid outstanding bonds of the State." Again, in the twelfth section of the act of February, 1869, under which relator's bonds were issued, they are termed, not the bonds of the State, but "the second-mortgage bonds of said company."

If it be urged that this interpretation is too strict, and that notwithstanding the language of the statute, yet the legislature intended
77 to include such conditional indebtedness, and such bonds, though not of the "bonded debt of the State" or "bonds of the State," but bonded and mortgaged debt of another party, there is another provision of the funding act which, in that case, would afford an instance of rash and incomprehensible legislation. The eighth section of the funding act provides "that the bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received in exchange for consolidated bonds, be cancelled and destroyed by the said board of liquidation." Not *worthy* the guarantee of the State cancelled, but the "bond be cancelled and destroyed," thus destroying the evidence required by the guarantor, the mere surety, the State, to recover, as would be her right over against the railroad company, the principal obligor. Generous as may the State have intended to be toward this railroad corporation, the court cannot consider that by the funding act her legislature intended, not only to fund as "bonds of the State the bonds of this railroad company for which she is only
78 surety," but, after so funding them, relinquish her rights thus arising against the railroad company. Yet such would be the practical effect if, as claimed by the relator, these bonds should be held as falling within the provisions of the funding act. Regarding the defense that the agreement of the State to guarantee the bonds of the company rested on the condition of acceptance of the act within ninety days after its passage, the survey of the road within eight months from said acceptance, and the completion of forty miles of road within one year from said survey, that is, one year and eleven months from the seventeenth of February, 1869, or by the seventeenth of January, 1871, there can be no question that the object and intent of the legislature were that the condition of the State's guarantee should be the completion of certain parts or the whole of the road within the time specified, and that, in default thereof, this obligation of the State to guarantee should lapse. This is evident from the statute.

The terms of the eighth section declare "that when the said second mortgage shall have been so delivered, approved, and recorded,
79 and one continuous portion or section of forty miles in length of said main line of railroad within the State of Louisiana shall have been constructed by the company, and the rails laid thereon," the governor shall then, on the presentment of the $500,000 of bonds, subscribe the certificate of guarantee; and, that there should exist no doubt as to such construction being a condition precedent to the promised guarantee by the State, it is carefully reiterated in the twelfth section that the company shall cause the survey and location of the whole of said main line of its railroad within this State within eight months, "and shall cause a section of at least forty continuous miles thereof, and the rails laid thereon, within twelve months after such survey and location:" and in case of failure of said company to survey, locate, and construct said line of railroad in the manner and within the time limited, "the obligation of the State of Louisiana by virtue of this act to guarantee the second-mortgage bonds of said company (as in this act provided) for or

upon that portion of said main line of railroad not constructed
80 within the time limited shall be guaranteed by the State of Louisiana."

Passing by the question of acceptance and survey within the time limited, and regarding which there is no proof in the record pro or con, the evidence as at the time of the completion of the first section of forty miles offered by the defendants, and uncontradicted in any manner by the relator, must be taken as conclusive as to this fact. This evidence shows that on the first of March, 1871, some days after the expiration of the time fixed for the completion of the forty miles, 26 44-100 miles of track had been laid, and the certificate of the chief engineer of the road to the governor and the testimony of the assistant engineer and one of the contractors establish that the first section of forty miles was completed only on the fifth of April, 1871. As said, no effort has been made to contradict this, and, established as it is by the personal and official knowledge of the witnesses, it must, as a fact, be considered by the court as conclusively established. It is attempted to avoid the effect of this evidence by the provisions of the tenth section, declaring "that the signature of the governor to the certificate of
81 guarantee shall be conclusive evidence in favor of the holder of every bond so certified that the conditions of this act have been complied with on the part of the company." As contradictory proof of the fact of the non-completion of forty miles of road within the time limited, this is insufficient. The non-completion of the work remains an established fact, notwithstanding any presumption to the contrary arising from the signature of the governor to the bonds.

To what extent the legislature intended or had the power to empower the executive to either waive, modify, or surrender any condition-precedent to rendering of State aid to a railroad corporation may be questionable. When, however, the assistance of the State to the extent of millions is thus promised by an act under the title "to expedite the construction of the railroad," and under the clear and expressed conditions that the beneficiary shall so expedite the construction of the road within fixed times, and on failure so to do the said promised assistance "shall cease and determine," and shall not be granted, the court cannot recognize the right or power of the executive to bind the
82 State to such obligation, unless those conditions have been complied with. The executive cannot do this through any constitutional power inherent in his office, nor can the legislature grant him such power.

The recognition of such power in the executive would be, as in the case at bar, to render nugatory all the conditions imposed on the beneficiary, in this case the railroad company. It would enable him to grant the assistance, not necessarily, as says the title of the act, "to expedite the construction of the railroad," but regardless thereof. If these bonds of the relator were certified by the governor before forty miles of road were completed, the certificate was unauthorized; if certified after the completion of said forty miles, on the fifth of April, 1871, that certificate was unauthorized, because, on February 18, 1871, the whole act, so far as concerned the guarantee of the State, had ceased by its express provision to have force or effect.

Even if it could be supposed to be the intention of the legislature to authorize the governor, should he so choose, to give the guarantee of the State to these bonds, in direct violation of the provisions and
83 enactments of the act itself, such authorization would be void, not only because such attempted authorization would exceed the

powers vested in the legislature, but also for the reason that this power of the governor to thus act in direct violation of the provisions of the act is not embraced in its title, as—were such power vested in the legislature—would be required under article 114 of the Constitution, declaring that "every law shall express its object or objects in its title." Regarding the claim of relator that it is an innocent third holder of the bonds for valuable consideration, and therefore not affected by any failure of the condition in the original issue, it suffices to say that the same plea has been set up in this court in other like cases, and adversely decided.

The arguments of counsel in this case have failed to convince the court of any error in the previous ruling.

Mandamus refused.

Judgment.

State of Louisiana, superior district court for the parish of Orleans.

84 STATE OF LA., EX REL. CITIZENS' BANK OF Louisiana, *vs.* BOARD OF LIQUIDATION. } No. 26552.

In this case submitted to the court for adjudication, and for the written reasons this day filed, the court considering the law and the evidence to be in favor of respondents, the Board of Liquidation, it is ordered that the application for a writ of mandamus be refused with costs.

Judgment rendered November 1st, 1875.

Judgment signed November 6th, 1875.

(Signed) JACOB HAWKINS, *Judge.*

Judgment filed November 6th, 1875, by P. E. Burke, dy. clerk.

Motion for appeal.—Filed Nov. 6th, 1875, by P. E. Burke, deputy clerk.

Superior district court for the parish of Orleans.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK of Louisiana, *vs.* BOARD OF LIQUIDATORS ORGANIZED UNDER act No. 3 of 1874. } No. 26552.

85 On motion of A. Pitot and G. L. Hall, on behalf of the Citizens' Bank of Louisiana, and on suggesting to the court that the plaintiffs in this case feel aggrieved by the judgment rendered against them:

It is ordered that an appeal be allowed to them from said judgment, on their giving bond in the sum of two hundred and fifty dollars, ($250.00,) conditioned as the law directs, said appeal to be made returnable before the supreme court of the State of Louisiana on the 3rd Monday of November, 1875.

Appeal bond.—Filed November 6th, 1875, by P. E. Burke, deputy clerk.

Know all men by these presents that we, the Citizens' Bank of Louisiana, as principal, and John G. Gaines, as surety, are held and firmly

bound unto John Burke, clerk of the superior district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum two hundred and fifty dollars, ($250.00,) for the payment whereof we bind ourselves, our heirs, executors, and administra-
86 tors, firmly by these presents, sealed with our seal and dated in the city of New Orleans on this sixth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas the above-bounded the Citizens' Bank of Louisiana have this day filed a motion for appeal from a final judgment rendered against them in the suit of the State of La., ex rel. Citizens' Bank of Louisiana, vs. The Board of Liquidators, organized under act No. 3 of 1874, No. 26552, in the superior district court for the parish of Orleans, on the first day of November, 1875, and signed on the sixth day of November, 1875:

Now, the condition of the above obligation is such that the above-bounded the Citizens' Bank of La. shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said John G. Gaines, surety, shall be liable in their place.

(Signed) JNO. G. GAINES, *Pres'd't.* [L. S.]

87 (Signed) JNO. G. GAINES. [L. S.]

Sheriff's return to motion for appeal.—Filed Nov. 10, 1875.

Received Nov. 8th, 1875, and on the 9th day of same month and year I served a copy of within rule on Board of Liquidators, thro' its president, W. P. Kellogg, in person.

Ret'd same day.

(Signed) EUGENE MESTIER,
Dy. Sh'ff.

Clerk's certificate.

I, John Burke, clerk of the superior district court in and for the parish of Orleans, State of Louisiana, do hereby certify that the foregoing eighty-one (81) pages do contain a true, correct, and complete copy and transcript of the record in the cause entitled "The State of Louisiana, ex rel. Citizens' Bank of Louisiana, versus The Funding Board, appointed under law No. 13, session of 1874," being No. 26552 of the
88 docket of the superior district court, including all documents filed, testimony and evidence adduced, and all proceedings had upon the trial of said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of this the superior district court, at the city of New Orleans, on this the 10th day of November, in the year of our Lord eighteen hundred and seventy-five, and in the one hundredth year of the Independence of the United States of America.

[SEAL.] JOHN BURKE, *Clerk.*

89 Supreme court of the State of Louisiana.

Order to place on summary docket.—Filed November 16, 1875.

STATE OF LA., EX REL. CITIZENS' BANK. *vs.* THE BOARD OF LIQUIDATION. } No. 6008.

The clerk of the supreme court of La. will please place this case on the preference docket, to be called and fixed at the earliest day.

(Signed) G. L. HALL,
Of Counsel for Pl'ff & Appellant.

Case called & continued.—Extract from minutes Saturday, December 18, 1875.

The court was duly opened: present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK. *vs.* THE FUNDING BOARD. } No. 6008.

This case was called for trial, and by agreement of counsel for
90 both parties the court ordered the same to be continued and entered at the foot of the docket.

Copy of acts.—Filed January 26, 1876.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK. *vs.* THE FUNDING BOARD. } No. 6008.

Nos. 3 and 4.

An act to provide for funding obligations of the State by exchange for bonds, etc.

No. 3.—An act to provide for funding obligations of the State by exchange for bonds; to provide for principal and interest of said bonds; to establish a board of liquidation; to authorize certain judicial proceedings against it; to define and punish violations of this act; to prohibit certain officers diverting funds except as provided by law, and to punish violations therefor; to levy a continuing tax, and provide a continuing appropriation for said bonds; to make a contract between the State and holders of said bonds; to prohibit injunctions in certain cases; to limit the indebtedness of the State and to limit State
91 taxes; to annul certain grants of State aid; to prohibit the modification, novation, or extension of any contract heretofore made for State aid; for the receipt of certain warrants for certain taxes, and to repeal all conflicting laws.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That for the purpose of consolidating and reducing the floating and bonded debt of

the State the governor, lieutenant-governor, auditor, treasurer, secretary of state, and speaker of the house of representatives are hereby authorized to cause to be prepared and to issue bonds to be known as "consolidated bonds of the State of Louisiana," of the denominations of one hundred, five hundred and one thousand dollars, to the amount of fifteen millions of dollars, or so much thereof as may be necessary, all payable forty years from the first day of January, 1874, and all to be numbered consecutively and made payable to bearer, and to bear interest at the rate of seven per cent. per annum, payable semi-annually, in the city of New York and city of New Orleans, on the first day of July and January of each year, and coupons for such interest shall be annexed thereto; said interest and principal to be payable in lawful money of the United States.

SEC. 2. Be it further enacted, etc., That the parties designated in the foregoing section shall constitute a board of liquida-
92 tion, and a majority of said board shall elect a fiscal agent for the State, who shall be a member of said board.

SEC. 3. Be it further enacted, etc., That the bonds authorized by the section one shall be signed by the governor, auditor, and secretary of state, and the coupons shall be signed by the auditor and treasurer, and when so prepared said bonds shall be exchanged by the board of liquidation for all valid outstanding bonds of the State and all valid warrants drawn previous to the passage of this act, by the respective auditors of public accounts of the State, on the treasurer thereof, except warrants issued by the auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants; provided, that the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief, and if final judgment shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act; and provided, further, that if any member of said board of
93 liquidation shall knowingly audit and fund any illegal claim against the State, he shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than five thousand dollars, and be imprisoned not less than than two years, at the discretion of the court.

And any person knowingly procuring the same to be done shall be subject to the same penalty.

SEC. 4. Be it further enacted, etc., That the exchange of the bonds *are* valid warrants authorized by this act shall be effected by said board of liquidation in the cities of New Orleans and New York.

SEC. 5. Be it further enacted, etc., That the consolidated bonds herein authorized shall be held and used by said board of liquidation only for the purpose of exchange as aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act, and any member of the board of liquidation using or attempting to use, or attempting to induce any person or persons to use, said bonds, or any of them, for any other purpose or purposes, shall, on conviction thereof, be punished by a fine of not less than five thousand dollars and by imprisonment at hard labor for not less than one year.

94 SEC. 6. Be it further enacted, etc., that notice of the adoption of this act shall be published by said board in one or more journals of New Orleans, New York, London, Paris, and Amsterdam.

SEC. 7. Be it further enacted, etc., That a tax of five and a half mills on the dollar of the assessed value of all real and personal property in

the State is hereby annually levied, and shall be collected, for the purpose of paying the interest and principal of the consolidated bonds herein authorized, and the revenue derived therefrom is hereby set apart and appropriated to that purpose, and no other; and that it shall be deemed a felony for the fiscal agent or any officer of the State, or board of liquidators, to divert the said fund from its legitimate channel as provided, and upon conviction the said party shall be liable to imprisonment for not more than ten years nor less than two, at the discretion of the court. If there shall, during any year, be a surplus arising from said tax after paying all interest falling due in that year, such surplus shall be used for the purchase and retirement of bonds authorized by this act, said purchases to be made by the said
95 board of liquidation, from the lowest offers, after due notice; provided, that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar. The interest tax aforesaid shall be a continuing annual tax until the said consolidated bonds shall be paid or redeemed, principal and interest; and the said appropriation shall be a continuing annual appropriation during the same period, and this levy and appropriation shall authorize and make it the duty of the auditor and treasurer and the said board, respectively, to collect said tax annually, and pay said interest and redeem the said bonds until the same shall be fully discharged.

SEC. 8. Be it further enacted, etc., That the bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received in exchange for consolidated bonds, be canceled and destroyed by the said board of liquidation; and consolidated bonds purchased as provided for in section seven of this act shall be canceled and destroyed, after public notice has been given of the same in the official journal of the State, in the presence of as many citizens
96 as may desire to be present, in like manner; and within ten days after such destruction, in each case, a proces verbal of the same shall be published and a report made to the general assembly, on the first Monday of every year, by said board.

SEC. 9. Be it further enacted, etc., That it shall be the duty of the auditor in his next annual report to give a detailed account of the proceedings had under this act, including the amount of new bonds issued, the amount of old bonds *are* valid warrants canceled, the amount of the same outstanding, and the cost of the exchange, and annually thereafter a full and exact statement of the condition of the public debt under the operation of this act.

SEC. 10. Be it further enacted, etc., That any judge, tax-collector, or any officer of the State, obstructing the execution of this act, or any part of it, or failing to perform his official duty thereunder, shall be deemed guilty of misdemeanor, and on conviction thereof shall be punished by imprisonment not exceeding five years, and by fine not exceeding two thousand dollars, at the discretion of the court; provided that
97 this section shall in no wise prejudice or affect the criminal proceeding under section five of this act.

SEC. 11. Be it further enacted, etc., That each provision of this act shall be, and is hereby declared to be, a contract between the State of Louisiana and each and every holder of the bonds issued under this act.

SEC. 12. Be it further enacted, etc., That all grants of State aid heretofore made, whether of bonds, endorsements, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be, and the same are hereby, repealed and annulled; nor shall the State hereafter modify,

novate, or extend any contract heretofore made for the giving of State aid, in any form or under any pretext.

SEC. 13. Be it further enacted, etc., That the entire State debt prior to the year of our Lord nineteen hundred and fourteen shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds
98 to be issued hereunder that said indebtedness shall not be increased beyond said sum during said period.

SEC. 14. Be it further enacted, etc., That any tax-collector who shall turn over any money or warrants by him collected to any person except to the State treasurer, shall be deemed guilty of misdemeanor, and shall, on conviction, be subject to the penalties prescribed in section ten of this act, and shall, in addition thereto, be liable in damages in double the amount so turned over; and any State officer requiring or demanding that said taxes shall be turned over to him, except the treasurer of the State, shall be liable, on conviction, to the same penalties as are prescribed in this section.

SECTION 15. Be it further enacted, etc., That from and after the passage of this act until the first day of July, 1874, all valid auditor's warrants issued for debts due prior to January 1, 1874, shall be received for all back taxes, licenses, and interest, and penalties thereon, due prior to said first of January, 1874, except two mills for school-fund, three mills for levee construction and repair fund, and two mills to the interest-fund, for the purpose of paying any interest in arrears
99 accruing on the bonded debt of the State prior to the passage of this act.

SEC. 16. Be it further enacted, etc., That no court, or judge thereof, shall have power to enjoin the payment of the principal or interest of any bond issued under this act, or the collection of the special tax therefor, or to enjoin any officer of State or parish in receiving warrants as is prescribed in section fifteen of this act.

SEC. 17. Be it further enacted, etc., That all acts or parts of acts in conflict with this act, or any section thereof, are hereby declared to be repealed, and that this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor & President of the Senate.

Approved January 24, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy.

P. G. DESLONDE,
Secretary of State.

No. 4.—An act proposing amendments to the constitution of the State of Louisiana.

SECTION 1. Be it enacted by the senate and house of repre-
100 sentatives of the State of Louisiana in general assembly convened, (two-thirds of the members of each house agreeing thereto,) That

the following amendments be proposed and entered upon the respective journals of the senate and house of representatives, with the yeas and nays taken thereon, and the secretary of state shall cause the same to be published three months before the next general election for representatives to the general assembly in at least one newspaper in every parish in the State in which a newspaper shall be published, and said proposed amendments shall be submitted to the people at said election in such manner and form that the people may vote for or against each amendment separately, i. e., "first proposed amendment, for approval," or "against approval," and in like manner as to the others; and if a majority of the voters at said election shall approve and ratify such amendment or amendments the same shall be appropriately numbered and become a part of the constitution, and be proclaimed as such by the governor and secretary of state.

PROPOSED AMENDMENT TO THE CONSTITUTION.

No. 1. The issue of consolidated bonds, authorized by the gen-
101 eral assembly of the State at its regular session in the year 1874, is hereby declared to create a valid contract between the State and each and every holder of said bonds, which the State shall by no means and in no wise impair. The said bonds shall be a valid obligation of the State in favor of any holder thereof, and no court shall enjoin the payment of the principal or interest thereof, or the levy and collection of the tax therefor; to secure such levy, collection, and payment the judicial power shall be exercised when necessary. The tax required for the payment of the principal and interest of said bonds shall be assessed and collected each & every year until the bonds shall be paid, principal and interest, and the proceeds shall be paid by the treasurer of the State to the holders of said bonds as the principal and interest of the same shall fall due, and no further legislation or appropriation shall be requisite for the said assessment and collection and for such payment from the treasury.

No. 2. Whenever the debt of the State shall have been reduced below twenty-five million dollars the constitutional limit shall remain at the lowest point reached, beyond which the public debt shall not thereafter be increased, and this rule continue in operation until the
102 debt is reduced to fifteen million dollars, beyond which it shall not be increased. Nor shall taxation for all State purposes, excepting the support of public schools, ever exceed twelve and a half mills on the dollar of the assessed valuation of the real and personal property in the State, except in case of war or invasion.

No. 3. The revenue of each year derived from taxation upon real, personal, and mixed property, or from licenses, shall be devoted solely to the expenses of the said year for which it shall be raised, excepting any surplus remain, which shall be directed to sinking the public debt. All appropriations and claims in excess of revenue shall be null and void, and the State shall in no manner provide for their payment.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved January 24, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy.

P. G. DESLONDE,
Secretary of State.

103 STATE OF LOUISIANA,
Office of Secretary of State.

NEW ORLEANS, *January* 19, 1876.

I hereby certify that the above amendments to the constitution of this State were duly ratified at the general elections held on the second day of November, A. D. 1874.

Given under my hand and the seal of the State this nineteenth day of January, A. D. 1876, and of the Independence of the United States the one hundredth.

P. G. DESLONDE,
Secretary of State.

CASE SUBMITTED.—*Extract from minutes, Wednesday, January* 26, 1876.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

STATE OF LA., EX REL. CITIZENS' BANK,
vs.
THE FUNDING BOARD. } No. 6008.

This case was called for trial, and having heard argument from
104 William H. Hunt & G. L. Hall, esq., of counsel for plaintiff & appellant, and Alexander P. Field, attorney-general, & J. Q. A. Fellows, esq., on behalf of the State of Louisiana and the defendant appellees herein,

The court took the case under advisement upon the briefs and papers now on file.

DECREE.—*Extract from minutes, Monday, March* 27, 1876.

The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor Justice Wyly pronounced the judgment and decree of the court in the following case:

STATE OF LOUISIANA, EX REL. CITIZENS' BANK of Louisiana,
vs.
THE FUNDING BOARD. } No. 6008.

On appeal from the superior district court for the parish of Orleans.

It is ordered that the judgment herein rejecting the demand of the relator be affirmed, with costs. Mr. Justice Howell read a concurring opinion, and his honor the chief-justice read a dissenting opinion in this case.

105 *Opinion.—Filed March 27th*, 1876.

STATE OF LOUISIANA, EX REL. CITIZENS' BANK,
vs.
THE FUNDING BOARD. } No. 6008.

Appeal from the superior district court for the parish of Orleans.

Mr. Justice WYLY:

The relator, the Citizens' Bank, appeals from the judgment refusing

a mandamus to compel the Funding Board to fund the sixty bonds of one thousand dollars each held by the relator which were issued under act 26 of 1869, and are known as "second-mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, guaranteed by the State of Louisiana."

The defence is: The guarantee is void because given after the adoption of the constitutional amendment limiting the State debt to 25 millions of dollars, and that limit had at the time of the guarantee been exceeded.

That act 26 of 1869, authorizing the governor to guarantee the second-mortgage bonds of said company to the extent of twelve
106 thousand five hundred dollars per mile, imposed certain conditions precedent to such guarantee:

1°. That the grant should be accepted within 90 days.

2°. That the railroad should be located to Houston, Texas, within eight months after said acceptance.

3°. That said corporation was to construct the first section of forty miles and have the same in running order within one year from the survey and location of the entire line of railroad.

4. That it was to construct and lay the rails on the entire road to the Sabine River within three years from such survey and location, and to Houston, Texas, within six months thereafter.

That in case of the failure of said railroad company to comply with said conditions, or any of them, said act provides that the obligation of the State shall cease and determine.

That said first section of forty miles was not completed within the time required by said act 26, to wit, on 18th January, 1871, nor until long afterwards, and no second section as required by said act has ever been completed, although the time for the completion of the entire road to Houston, Texas, has long since expired.

107 That on failure to complete the first section of forty miles on or before 18th January, 1871, the obligation of the State to guarantee said second-mortgage bonds ceased and determined, and the subsequent enactment authorizing such guarantee was in violation of the Constitution.

The defence was also made that the bonds held by relator and sought to be funded are not bonds executed by the State and authorized to be funded by act No. 3 of 1874.

The evidence shows that the first section of forty miles was not completed by the 18th January, 1871, the time required by the act; that it was not completed till after the first day of April, 1871; and that no other sections of the road have been completed, although the time has long since expire' for completing the whole road.

Section 12 of said act 26 declares that "in case of failure of the said company to survey, locate, and construct the said main line of railroad within the State of Louisiana, in the manner and within the time limited in this section of this act for such survey, location, and construction, the obligation of the State of Louisiana, by virtue of this act, to
108 guarantee the second-mortgage bonds of said company (as in this act provided) for or upon that portion of the said main line of railroad not constructed within the time limited, shall cease and determine, and none of said second-mortgage bonds for or upon that portion of said main line of railroad not constructed within the time limited shall be guaranteed by the State of Louisiana."

Act 26, approved 17th February, 1869, created a conditional obligation of the State to guarantee the second-mortgage bonds of the New Or-

leans, Mobile and Chattanooga Railroad Company. Before, however, the condition happened there was a constitutional amendment adopted, in November, 1870, prohibiting an increase of the State indebtedness beyond 25 millions of dollars, and this limitation had already been reached. If the conditions stipulated in the act had been complied with when the governor endorsed the guarantee of the State on the second-mortgage bonds of said company, no debt would be created thereby in violation of the constitutional amendment then in force, because said endorsement would only evidence a valid obligation of the State incurred
109 prior to the adoption of the constitutional limitation. It would evidence an unconditional obligation resulting from the performance by said company of the stipulations contained in said act of 1867. But if, as the evidence shows, the conditional obligation had lapsed when the governor endorsed the guarantee on said bonds, that endorsement of guarantee would be the creation of a new debt, which was prohibited.

The governor in indorsing the bonds was a fiduciary discharging the powers conferred on him by act 26 of 1869, but these powers were modified by the constitutional amendment supervening between this grant of authority and the exercise thereof; and all parties acquiring said bonds were charge' with notice of the authority of the fiduciary, who endorsed thereon the guarantee of the State. But for the constitutional amendment the endorsement of guarantee would bind the State as to relator or any bona-fide third holder of said bonds, whether the stipulations of said act of 1869 had been complied with or not by said company, because section 10 of said act provides that "the signature of the governor to the certificate of guarantee shall be conclusive evi-
110 dence in favor of the holder of every bond so certified that the conditions of this act have been complied with on the part of the company, and that said bonds have been duly made and regularly certified and issued pursuant to the provisions of this act; and every such certificate of guarantee when so subscribed shall be a valid and binding obligation of the State of Louisiana in favor of whomsoever shall from time to time be the holder of the bonds bearing such certificate, and the State of Louisiana hereby pledges its public faith and credit to the performance of such guarantee according to its terms."

The constitutional amendment, however, modified and restricted the powers conferred on the governor in regard to endorsing these bonds. After it went into operation, neither the governor in the exercise of powers previously granted, nor the general assembly itself could create a debt. There was no power in any of the departments to create a debt, because the limitation of 25 millions had already been reached.

The governor could only give the certificate of guarantee in evidence of a valid subsisting obligation of the State arising from the performance by said company of the stipulations of said act 26 of 1869.
111 That part of the act making the certification of guaranty by the governor conclusive proof that the conditions had been complied with by the company and that the bonds had been duly made, regularly certified, and issued, that they shall be held valid and binding obligations of the State, and pledging the public faith and credit for the performance of such guarantee, we regard as restricted by the constitutional amendment; and all holders of the bonds are charged with notice of the existence and effect of that amendment.

The governor, who certified the guarantee, was a fiduciary, and he could exercise no greater powers than his principal, the general assembly, could exercise. At that time the general assembly could not declare a certification of guaranty conclusive proof of an indebtedness of the State, be-

cause, if it was not given in evidence of a subsisting valid obligation, it would be the creation of a new debt, in contravention of the constitutional amendment; and the governor could exercise no greater powers under authority of the general assembly than that body possessed
112 at the time he certified said bonds.

The New Orleans, Mobile and Chattanooga Railroad Company had failed to complete the road in pursuance of the stipulations of the act of 1869, and the obligation of the State to guarantee their bonds had lapsed. The certification of guarantee by the governor was therefore the creation of a new debt under authority given by the general assembly prior to the adoption of the constitutional amendment. But this power to create the debt was no greater than if it had been given by the general assembly on the day the certificate of guaranty was signed by the governor.

The constitutional amendment restricted all unexercised powers delegated by the general assembly, as well as all powers not delegated, in regard to the right to create a debt beyond twenty-five millions of dollars.

If the general assembly could not create a debt when the bonds in question were guaranteed, and that was the creation of a debt, they could not by enactment provide that the governor's certification
113 of guarantee shall be conclusive proof of an indebtedness by the State, and thereby cut off judicial inquiry into the validity of the obligation arising from such guarantee. What cannot be done directly cannot be accomplished indirectly.

At the time the guarantee was made, the State could not be bound beyond the limitation of twenty-five millions of dollars by the act of the general assembly, or by the act of the governor under authority of the general assembly, it matters not when the authority was given to him.

The extent of this authority must be determined by the extent of the powers of the general assembly at the time it was exercised by the governor, because the mandatory cannot exercise greater powers than are possessed by his principal. As the general assembly could not create a debt, or grant a certificate and make it conclusive evidence of a debt, at the time the governor guaranteed the bonds of the New Orleans, Mobile and Chattanooga Railroad Company, the governor could not do so under authority of the general assembly. The date of the certificate of guarantee was subsequent to the adoption of the constitutional amend-
114 ment, and all persons acquiring said bonds were charged with notice of the authority of the governor to sign the guarantee, and with notice of the existence and the effect of the constitutional limitation on the authority given to the governor by the act of 1869.

The relator, however, contends that if there was delay in complying with the condition requiring the completion of the first section of the road within the time limited in the act of 1869, objection on account thereof was waived by the acquiescence of the State in the subsequent completion of said section by said company, and this acquiescence amounts to a ratification by the State.

The difficulty is, the State could not revive, by ratification or otherwise, the obligation that had lapsed by the failure of the New Orleans, Mobile and Chattanooga Railroad Company to comply with the stipulation of the act of 1869, because at the date of the alleged acquiescence the constitutional amendment was in force.

The bill of exceptions to the evidence admitted to prove the time when the first section of the railroad was completed was not well taken.

115 It was the only means by which the fact could be ascertained whether the New Orleans, Mobile and Chattanooga Railroad Company had complied with the stipulations of the act of 1869, and consequently whether there was a valid subsisting obligation of the State when the bonds were guaranteed; and the determination of this question was important, in order to ascertain whether the governor had authority to guarantee the bonds.

We conclude that the constitutional amendment prohibited the guarantee of the bonds, the obligation of the State to do so under the act of 1869 having lapsed by the failure of the New Orleans, Mobile and Chattanooga Railroad Company to perform the stipulations thereof, also that said bonds are not valid obligations of the State, and cannot be funded.

We are also of the opinion that the funding of these bonds *are* not provided for by the funding act, being act No. 3 of the acts of 1874.

That act provides for the issue of consolidated bonds by the funding board; that when prepared "said bonds shall be exchanged by the board of liquidation for all valid outstanding bonds of the State, and all valid warrants drawn previous to the passage of this act," * * *

116 "except warrants issued by the auditor in payment of the constitutional officers of the State, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds, and all valid warrants." * * * "That the consolidated bonds herein authorized shall be held and used by said board of liquidation only for the purpose of exchange, as aforesaid; said bonds shall be used for no other purpose or purposes than as authorized by this act;" * * * and "that the bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received in exchange for consolidated bonds, be cancelled and destroyed by said board of liquidation." * * * In precise terms the act provides for funding the bonds of the State, and "shall, as fast as they are received in exchange for consolidated bonds, be cancelled and destroyed."

From the language employed the meaning of the act in regard to the bonds to be funded was evidently the bonds issued by the State—State bonds; because when these bonds were received in exchange for consolidated bonds they would cease to be of any use, and it was prudent and right that they should be immediately "cancelled and destroyed by said board of liquidation."

117 It would not, however, be prudent and right to cancel and destroy the second-mortgage bonds of the New Orleans, Mobile & Chattanooga Railroad Company, which were guaranteed by the State, if they were received in exchange for consolidated bonds.

Surely the general assembly would not direct the canceling and destroying of this mortgage paper made by said company, when taken up by the board of liquidation, if they intended them to be taken up in exchange for consolidated bonds.

If the funding of these bonds had been contemplated, the board of liquidation would not have been required to cancel and destroy them, and thereby defeat the possibility of recovery against the makers of said bonds, personally, as well as the right resulting from the mortgage.

It is therefore ordered that the judgment herein rejecting the demand of the relator be affirmed with costs.

HOWELL, J., concurring:

In the case of the State, ex rel. Citizens' Bank, vs. Board of Liquidators, No. 5892, recently decided, we held that the funding act should be

strictly construed, & that only the "valid outstanding bonds of the
118 State & all valid warrants drawn previous to the passage" of said act, except certain warrants, described, could be exchanged for bonds created by the said act, & by the law the evidences of obligation so exchanged are required to be destroyed. The bonds in this case are the bonds of the New Orleans, Mobile & Chattanooga Railroad Company, & not the bonds of the State, & are therefore not embraced in the purview or contemplation of the funding act. The fact that the State has guaranteed their payment does not, in my opinion, make them the bonds of the State. It only creates the obligation of the State to pay them, if the company fails to do so, and the obligation may have become fixed without making them the bonds of the State in the contemplation of the funding act. Had the legislature intended to include such obligations, it would have used terms to express such intention on this ground.

I concur in the decree.

Mr. Chief-Justice LUDELING, dissenting:

This suit is instituted by the Citizens' Bank of Louisiana to compel the Board of Liquidators, created by act No. 3 of the general assembly of 1874, to fund sixty bonds & coupons of the New Orleans, Mobile
119 & Chattanooga R. R. Co., & endorsed & guaranteed by the State of Louisiana.

The plaintiff alleged it acquired the said bonds in good faith, & for value, before maturity.

The defense is "that these bonds were not the bonds of the State," and therefore not fundable under act No. 3 of 1874; that the conditions of the act No. 26 of 1869, to be performed on the part of the company, in order to obligate the State to guarantee the payment of the bonds, had not been complied with, and that therefore the obligation of the State to give this guarantee had, in the words of the act, ceased and determined, and this before the guarantee had or could have been given; that among the conditions were that a section of forty miles should be completed within a specified time, and the whole road within a certain other specified time, and that the bonds were to be guaranteed only as each section of forty miles was completed; that the first section of forty miles was to have been completed on or before January 18, 1871, the whole road to the Sabine by January 18, 1873, and to Houston, Texas, by July 18, 1873; that the first section was not completed until May, (April) 1871, and that no second section of forty miles was yet completed; that
120 the obligation of the State to guarantee the payment of the bonds had ceased and determined on January 18, 1871, and the amendment to the constitution limiting the State debt to $25,000,000, adopted by vote of the people, November 7, 1870, had supervened, and the further increase of the debt or obligation of the State was prohibited, the constitutional limit of the State debt having already been exceeded; that the guarantee of the payment of these bonds, after the obligation to do so had ceased and determined, was the creation of a new debt, and being in violation of the constitution, the act of the governor was null, and was beyond his power.

The guaranty of the State was made by virtue of act No. 26 of the general assembly of Louisiana, approved the 17th of Feb., 1869, entitled "An act to expedite the construction of the railroad of the New Orleans, Mobile & Chattanooga Railroad Company." The act provides "that after the mortgage shall have been delivered & forty miles of road constructed, the company may deliver to the governor $500,000 of such second-mortgage bonds, & the governor shall thereupon subscribe a cer-

tificate on said bonds in the following words: The payment of
121 the principal on the within bond when due, & the interest thereon, as it accrues, is guaranteed by the State of Louisiana, * * * & he shall affix the great seal of the State, & the said seal shall be attested by the signature of the secretary of state, & the said bonds shall then be delivered to the company for its general uses & purposes." And the same act further declares "that the signature of the governor to the certificate of guarantee shall be conclusive evidence in favor of the holder of any bond so certified that the conditions of this act have been complied with on the part of the company, & that said bonds have been duly made & regularly certified & issued pursuant to the provisions of this act; & every such certificate of guarantee, when so subscribed, shall be a valid & binding obligation of the State of Louisiana in favor of whomsoever * * * & the State hereby pledges its public faith & credit to the performance of such guarantee according to its tenor." Sects. 8 & 10.

The certificates of guarantee were duly signed by the governor & sealed with the great seal of the State, & attested by the secretary of state as the law required. The evidence shows that the bonds aforesaid were acquired before maturity in good faith & for value.

122 The first objection urged against the demand of the relator is that the bonds are not the bonds of the State, & therefore they cannot be funded. It has often been decided that "where a third person is privy to the original consideration, & at the time the note is given, endorses an absolute undertaking on the back to pay it at maturity, he may be treated as a joint & several promissor with the party who signs on the face of the note." (19 Wend., 202; 8 Pick. 423; 24 Wend., 456; 22 How., 341; Story, from note § 58, 59.) This is decided upon the principle that two instruments of the same general nature, executed at the same time, & relating to the same subject-matter, are to be construed together as forming but one obligation. The State & the railroad company promise to pay the money stated on the face of the bonds, & at the time specified therein. If one "put his name on the back of the note at the time it was made as surety for the maker & for his accommodation, to give him credit with the payee, or if he participated in the consideration for which the note was given, he must be considered a joint maker." (22 Howard, 350; Story on Prom. Notes, sec. 58, 59, 479.)

123 For the purpose of giving credit to the bonds intended to raise money to build a railroad within the State, the State put its name upon the back of said bonds at the time they were executed, & thereby promised unconditionally to pay said bonds. Therefore, to all intents & purposes, these bonds must be deemed the bonds of the State, & within the intendment of the funding act. If valid, these bonds unquestionably form a part of the bonded debt of the State, which it was the purpose of the general assembly & of the people to fund. Are they valid obligations of the State?

The contract from which these obligations spring was made by act No. 26 of the general assembly of 1869. At that time there was no constitutional restriction upon the power of the general assembly to create debts, & the general assembly had the power to enact act 26 aforesaid. It has already been stated that the relator is a bona fide holder of the bonds, and for a valuable consideration.

It is beyond dispute, now, that bonds like those of relators in this case are commercial instruments, & that the innocent holder is not

affected by equities existing between the original parties. (1 Bl., 386; 2 Wall., 110; 2 Black, 722; 1 Wall., 82; 3 Wall., 327.)

124 In the case of Mercer County vs. Hackett, the Supreme Court said, "The bonds declare on their face that the faith, credit, & property of the county is solemnly pledged, under authority of certain acts of the assembly, & that in pursuance of said acts the bonds were signed by commissioners of the county. They are on their face complete & perfect, exhibiting no defect in form or substance; & the evidence offered is to show that the recitals on the bonds are not true, & that no law exists to authorize their issue, but that the bonds are not made in pursuance of acts of assembly authorizing them. We have decided in the case of Commissioners of Knox County vs. Aspinwall that when the bonds on their face import a compliance with the law under which they issued, the purchaser is not bound to look further." (1 Wall., 83; 3 Wall., 327.)

The governor was the lawfully constituted agent of the State to sign the certificates of guarantee, & he was vested with the discretion to decide when the conditions had happened upon which the certificates were to be signed, & having signed them, the State cannot re-

125 pudiate his act. (3 Wall., 93; 21 Wall., 138, 321, 354.) The bonds on their face import a compliance with the law under which they issued, & the purchaser was not bound to look further. (1 Wall., 83.)

But it is said that inasmuch as the conditions-precedent to signing the certificates by the governor had not happened before the adoption of the constitutional amendment limiting the power of the general assembly to create debts, the power of the legislature to create debts had ceased, because the State debts then exceeded the limit, & that the act of the governor in signing the certificates was a nullity. What effect the adoption of the constitutional amendment had on the contract between the original parties it is not necessary to consider in this case, but as to bona fide third holders for value it could have none.

As already said, the obligation of the contract sprang from the act of the general assembly, passed long before the adoption of the constitutional amendment; & whether the conditions had then happened or not which authorized the governor to sign the certificates could have no effect against the innocent holder, as the bonds on their face import a compliance with the law.

I therefore dissent.

126 *Petition for rehearing.—Filed April* 10, 1876.

In the supreme court.

THE STATE OF LOUISIANA, EX REL. CITIZENS' BANK OF LOUISIANA, *vs.* THE BOARD OF LIQUIDATORS, &C. } No. 6008.

To the honorable the judges of the supreme court of the State of Louisiana:

The petition of the Citizens' Bank of Louisiana, praying for a rehearing in this case, respectfully represents:

1°. That the petitioners believe the authorities quoted in this case in suport of the principle "that the certificate of the governor is conclusive evidence in favor of third bona-fide parties that the bonds have been issued according to law" apply as well to the constitutional

amendment limiting the State debt to $25,000,000 as it does to the work required to be done by the company before being entitled to said bonds, and that therefore said amendment cannot be considered as affecting the claim of said bank; and the validity of said decisions and
127 authorities quoted has again been recognized by the United States circuit court in New Orleans, in the suit of Ranger vs. The City of New Orleans, lately decided.

2°. That even admitting the constitutional amendment as affecting the case, we would beg leave to remark that in the $25,000,000 are included the two millions and a half of bonds issued by the State in favor of the New Orleans, Mobile and Chattanooga and Texas Railroad, for the purchase of stock, which bonds have been declared null and void by recent decisions of this court, and that therefore, deducting said two millions and a half of bonds, the limit allowed for the State indebtedness was not attained, and consequently the bonds held by the Citizens' Bank cannot be excluded by reason of their exceeding the limit of $25,000,000.

3°. That as regards the date at which the work required to be done was terminated, petitioners beg leave to refer your honors to the telegram recorded this day (4th of April, 1876) from Wm. S. Williams, late treasurer of the New Orleans, Mobile and Chattanooga and Texas Railroad Company, as follows:

"Error of judgment on guarantee bonds by supreme court, in
128 that forty miles were not completed within limit fixed by charter. Forty miles were completed December, 1870, whereas limitation ran to January 18th, 1871," as appears from the letter of honorable W. W. Howe, hereto annexed for reference.

Upon the authority of the decision of this honorable court in State vs. Clinton, 26 A., p. 348, in which, on a simple suggestion of counsel for the State that certain proof could be had, your honors remanded the cause; and on suggesting that your honors might, in the interest of justice, re-examinine this question of fact; that there are other bonds of the same issue on which the said question might be raised.

Petitioners pray that a rehearing be granted in this case, and for general relief, &c.

Respectfully submitted.

A. PITOT AND G. L. HALL.
Of Counsel.

Letter of Hon. W. W. Howe.—Filed April 10, 1876.

NEW ORLEANS, *Apl.* 4, '76.

ARMAND PITOT, Esq'e,
Atty. Citizens' Bank:

129 DEAR SIR: I have to-day received from Wm. S. Williams, late treasurer of N. O., Mobile & Chattanooga (or Texas) R. R. Co., a dispatch, as follows:

"Error of judgment on guaranteed bonds by supreme court, in that forty miles were not completed within limit fixed by charter. Forty miles were completed December, 1870, whereas limitation ran to January 18, 1871."

Mr. Williams has, so far as I know, no interest in your case. His office is at the office of the company in N. Y., where all its archives are, and his statement is quite sure to be correct.

I do not suppose the court or the State, as defendant, would wish to

condemn and annul your bonds on an error of fact, which in the interest of justice they can give an opportunity to correct.

In the State vs. Clinton, 26 Annual, at p. 348, on a simple suggestion from counsel of the State in their brief that certain proof could be had, the court reversed a judgment and remanded the cause, though conceding that the State was in fault for not having furnished such proof.

There is another reason why the court might in the interest of justice re-examine this question of fact; there are other bonds of the same issue.

130 If the fact be that the 40 miles were done promptly, those other bondholders will certainly raise the question again, which may just as well be settled in your case.

Very resp'y, your obt. svt.,

W. W. HOWE.

Rehearing refused.—Extract from minutes, Monday, May 1, 1876.

The court was duly opened pursuant to adjournment. Present, their honors John T. Ludeling, chief-justice, and Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, James G. Taliaferro, associate justice.

His honor the chief pronounced the judgment and decree of the court in the following case:

STATE OF LA., EX REL. CITIZENS' BANK OF LA.,
vs.
THE FUNDING BOARD. } No. 6008.

It is ordered that the rehearing applied for in this case be refused.

131 *Petition for writ of error.—Filed May* 25, 1876.

STATE OF LOUISIANA, EX REL. THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF LIQUIDATION, ETC. } No. 6008.

To the hon. John T. Ludeling, chief-justice of the supreme court of Louisiana.

The petition of the Citizens' Bank of Louisiana, the relator herein, respectfully shows that this action was commenced in the superior district court for the parish of Orleans, May 27th, 1875, for the purpose of compelling the defendant board to fund the bonds and coupons held by petitioner according to the provisions of the act No. 3 of 1874, commonly called the funding bill. That in the original petition it was averred that the refusal of said board to act in the premises was a violation of the contract made by the State with the relator.

That judgment having been rendered by said court against relator, an appeal was taken by it to the supreme court of Louisiana, which
132 is the highest State court of law and equity in which a decision could be had, and said judgment was affirmed, as by the opinions and decrees of the last aforesaid court will more fully appear.

Petitioner shows that the bonds and coupons held by petitioner were authorized by and issued under the act of the legislature of Louisiana No. 26 of 1869, and said act and said bonds and coupons formed a con-

tract with petitioner, and that by the constitutional amendment limiting the State debt of Louisiana, adopted in November, 1870, as invoked by said defendant board and the State as intervenor, and applied by the supreme court of Louisiana, the objection of the contract between the said State of Louisiana and petitioner was impaired in contravention of the prohibition of the 10th section of the 1st article of the Constitution of the United States.

Petitioner shows that it is entitled to a writ of error to the Supreme Court of the United States from said final judgment, and he prays that the same may be granted according to law, and the accompanying bond approved and a citation signed, and for general relief.

133 (Signed) ARMAND PITOT,
(") G. L. HALL,
(") W. W. HOWE,
Attorneys for Petitioner.

Order allowing writ of error.

Let the order for a writ of error be granted, returnable to the Supreme Court at Washington City, D. C., on the second Monday of Oct. next, according to law, on appellant's giving bond in the sum of five hundred dollars, conditioned according to law. This 24 May, 1876.

(Signed) JNO. T. LUDELING,
Chief-Justice S. C. of La.

Writ of error.—Filed May 25th, 1876.

Supreme court of the State of Louisiana.

THE STATE OF LA., EX REL. THE CITIZENS' Bank of La., *vs.* THE BOARD OF LIQUIDATION, AND THE STATE of La., intervenor. } No. 6008.

Copy of a writ of error lodged in the clerk's office of the supreme court of Louisiana, in pursuance of the statute in such cases made and provided, this 24th day of May, one thousand eight hundred & seventy-six.

(Signed) A. PITOT & G. L. HALL,
Attys. of Plaintiffs in Error.

134 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between the State of Louisiana on the relation of the Citizens' Bank of Louisiana, plaintiff in said suit, and The Board of Liquidation, defendant, and the State of Louisiana, intervenor, wherein was drawn in question the validity of a statute of or an authority exercised under said State of Louisiana, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity, and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, privilege, or exemption specially set up or claimed under such clause of the Constitution, a

manifest error hath happened, to the great damage of the said
135 Citizens' Bank of Louisiana, the said relator, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 24th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

Approved:
(Signed) JOHN T. LUDELING,
Chief-Justice S. Court of Louisiana.

136 *Bond for writ of error.—Filed May 25th*, 1876.

Supreme court of the State of Louisiana.

STATE OF LA., EX REL. CITIZENS' BANK OF LA.,
vs.
THE BOARD OF LIQUIDATION. } No. 6008.

Know all men by these presents that we, the Citizens' Bank of Louisiana, as principal, and John G. Gaines, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the Board of Liquidation of the State of Louisiana, and to the State of Louisiana, and to each of their successors, executors, administrators, heirs, and assigns, in the sum of five hundred dollars, lawful money of the United States of America, for which payment, well and truly to be made to the parties last aforesaid and each of them, and said successors, executors, administrators, heirs, and assigns, we bind ourselves, jointly and severally in solido, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals and dated the 23d day of May, 1876.

137 Whereas the said Citizens' Bank of Louisiana has presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of Louisiana:

Now, the condition of the above obligation is, that if the above-named Citizens' Bank of Louisiana shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void: otherwise to remain in full force and virtue.

(Signed) JNO. G. GAINES,
Prd. Citizens' Bank of La.

Signed, sealed, and in the city of New Orleans, May 24th, 1876.
(Signed) JNO. G. GAINES.
Witness:
(Signed) G. L. HALL.

Approved:
(Signed) JNO. T. LUDELING,
Chief Justice of S. C. of Louisiana.

138 Supreme court of the State of Louisiana.

Clerk's certificate.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred & five (105) pages contain a full, true, and complete copy of the transcript of the proceedings had in the superior district court for the parish of Orleans in a certain suit wherein The State of Louisiana, ex rel. Citizens' Bank of Louisiana, was plaintiff, and The Funding Board was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which said transcript of appeal is now on the files of this honorable court, under No. 6008.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this 28th day of June, anno Domini , and in the one hundredth year of the Independence of the U. S. of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

139 *Certificate of the judge.*

Supreme court of the State of Louisiana.

I, John T. Ludeling, chief-justice of the supreme court of the State of Louisiana, do hereby certify that John Miller Howell is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of John Miller Howell to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 28th day of June, anno Domini 1876.

JNO. T. LUDELING,
Chief-Justice S. Court of Louisiana.

140 THE UNITED STATES OF AMERICA.

Supreme court of Louisiana.

The President of the United States to the Board of Liquidation of the State of Louisiana and to the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein the Citizens' Bank of Louisiana, relator, plaintiff in error, and you are defendants, to show cause, if any there be, why the judgment rendered against the said Citizens' Bank of Louisiana, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 24th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

JNO. T. LUDELING,
Chief-Justice S. C. of La.

141 (Indorsed:) Supreme court of La. No. 6008. The State, ex rel. Citizens' Bank of La., vs. The Board of Liquidation et al. Citation. Serve on Board of Liquidation thro' W. P. Kellog, presdt.

For return.

June 23, 1876. And on the 24th day of same month & year, I served a copy of within citation on the Board of Liquidation thro' Wm. Pitt Kellogg, its president, in person.

Ret. same day.

Shff. fees, $2.00.

EUGENE MESTIER,
Dy. Shff.

Sup. dist. court, No. 26552.

Eugene Mestier, dy. shff., duly sworn, deposes that all the facts and allegations of his return are true.

EUGENE MESTIER,
Dy. Shff.

Sworn to and subscribed before me this 12th of July, A. D. 1876.

M. P. JULIAN,
Dy. Clk. Sup. Court State of La.

142 THE UNITED STATES OF AMERICA.

Supreme court of Louisiana.

The President of the United States to the Board of Liquidation of the State of Louisiana and to the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The Citizens' Bank of Louisiana, relator, plaintiff in error, and you are defendants, to show cause, if any there be, why the judgment rendered against the said Citizens' Bank of Louisiana, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 24th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

JNO. T. LUDELING,
Chief-Justice S. C. of Louisiana.

143 (Indorsed:) Supreme court of La. No. 6008. The State, ex rel. Citizens' Bank of La., vs. The Board of Liquidation. Citation et al. Serv' on State La.

For return.

Recd. June 23, 1876. And on the 24th day of same month & year I served a copy of within citation on the State of Louisiana thro' Wm. Pitt Kellog, its governor, in person.

Ret. same day.

Shff.'s fees, $2.00

EUGENE MESTIER,
Dy. Shff.

Eugene Mestier, dy. sheriff, duly sworn, deposes that all the facts and allegation of his return are true.

EUGENE MESTIER,
Dy. Shff.

Sworn to & subscribed before me this 12th of July, A. D. 1876.

M. P. JULIAN,
Dy. Clerk Sup. Court State of La.

Indorsement on cover: No. 782. The State, ex rel. The Citizens' Bank of Louisiana, plaintiff in error, vs. The Board of Liquidation of the State of Louisiana. Louisiana sup. ct. Filed 11th October, 1876.

No 215.

In the Supreme Court

OF THE UNITED STATES.

THE STATE OF LOUISIANA, EX REL.
CITIZENS' BANK OF LOUISIANA, APPELLANTS,

vs.

BOARD OF LIQUIDATORS,
(*Organized under Act No. 3 of 1874,*) APPELLEES.

Writ of Error to
~~Appeal from~~ the Supreme Court of the State of Louisiana.

Brief on behalf of Citizens' Bank, ~~Appellants~~.

Plffs in Error.

In the Supreme Court

OF THE UNITED STATES.

THE STATE OF LOUISIANA, EX REL.
CITIZENS' BANK OF LOUISIANA,

vs.

BOARD OF LIQUIDATORS,
Organized under Act No. 3 of 1874.

This suit is instituted by the Citizens' Bank of Louisiana, to oblige the Liquidators appointed by the Act No. 3 of the Statutes of 1874, to fund Sixty Bonds of the New Orleans, Mobile and Chattanooga Rail Road, issued under authority of the provisions of the Act No. 26, approved 17th February, 1869, entitled: "An act to expedite the construction of "the rail road of the New Orleans, Mobile and Chat- "tanooga Rail Road Company, in the State of Louis- "iana!" together with $12,000 of matured interest coupons unpaid—which Bonds are secured by a second mortgage in favor of the State of Louisiana. The claim is made against the State by reason

of its guarantee for the payment of said Bonds and of interest coupons attached to the same.

The first of the Bonds in possession of the Bank is designated by No. 26, and the second by the No. 32, and the other fifty-eight Bonds are numbered from 33 to 90 inclusively. The numbers show that the Bonds were among the first issued and given, consequently, during the beginning of the work contemplated to be performed by the Company.

These Bonds were issued under the authority of a Statute of the State of Louisiana, to encourage a work of public utility and of immense advantage to the State of Louisiana and all its Citizens. They were to be distributed at future periods, which could not be previously determined by law, but only corresponding with the progress of the work, and the assistance rendered to continue it.

Besides the length of time during which those Bonds could be issued, their sale was authorized through the whole world, and the interest coupons were payable in London, New York and New Orleans, at the option of the holder.

Those Bonds not being issued at a stated time fixed before hand by law, but subject to the fulfilment of certain conditions and obligations which no one could ascertain but the State, which was offering its guarantee to procure their discount by foreign capitalists, it was therefore necessary that the State

should provide by law how the fulfilment of such conditions and obligations could be relied upon by the Discounters of said Bonds and the Holders thereof. Without such certificate from the State, under its great seal, thereby giving them the character of an endorsement, it is evident to any reasonable man that those Bonds would never have been taken. The signature of the Governor was the only thing giving them vitality, under the condition expressed in the law, that said signature would be conclusive as to the sufficiency of the consideration for which the Bonds were given, and of the satisfaction furnished to the Governor that the law had been complied with.

The law says so expressly :

The Sections 7 and 8 containing the conditions between the State and the Company for the issuing of the first series of Bonds to the amount of $500,000 contain the declaration " that the approval of said " Bonds by the Governor *shall be conclusive* as to the " sufficiency of the form and execution of said mort- " gage, *and as to its conformity to the provisions of* " *the act.*" ( )

" That after the mortgage shall have been de- " livered and 40 miles of road constructed, the Com- " pany may deliver to the Governor $500,000 of " such second mortgage Bonds, *and the Governor shall* " *thereupon subscribe a certificate* on said Bonds in the " following words : *The payment of the principal*

" *of the within Bond* WHEN DUE, *and the interest* " *thereon*, AS IT ACCRUES, *is guaranteed by the State* " *of Louisiana &c.*, and he shall affix the great seal " of the State and the said seal shall be attested by " the signature of the *Secretary of State;* and said " Bonds shall then be delivered to the Company for " its general uses and purposes."

The above is the contract between the State and the Company; but it was not sufficiently solemn and explicit to secure the capitalists and dispense them with the necessity of inquiring whether the law had been complied with, or whether, even in case of some slight deviation from the requirements of the law, the conditions were not ultimately fulfilled, the work completed and adopted, and the money really due in consideration thereof.

Then comes the 10th Section containing the solemn declaration and guarantee of the State, and its personal obligation in favor of the Bond holders, in the following words:

(Sec. 10.) "That the signature of the Governor " to the certificate of guarantee *shall be conclusive* " *evidence in favor of the holder of any Bond so cer-* " *tified*, that the conditions of this act have been " complied with on the part of the Company; and " that said Bonds have been duly made and regularly " certified, and issued pursuant to the provisions of " this Act; *and every such certificate of guarantee,*

" when so subscribed, *shall be a valid and binding* " *obligation of the State of Louisiana* in favor of " whomsoever &c., &c., and *the State hereby pledges* " *its public faith and credit to the performance of such* " *guarantee according to its terms.*"

Sections 12 and others refer to the continuation and completion of the Road, and have nothing to do with the Bonds furnished for the first 40 miles constructed, and for which the first Bonds must necessarily have been delivered to the Company.

Now it is a fact of public notoriety that the Rail Road is in full use and operation to Donaldsonville, a distance of nearly sixty miles, since May, 1871, and the Defendants have themselves, established that the first 40 miles were completed on the 1st of April, 1871.

Another fact of public notoriety, and admitted by Defendants, on record, is that the Company is insolvent and therefore unable to meet its obligations. (p.)

The building of the Road, undertaken by the Company, to the distance of 40 miles, before being entitled to the guarantee of the State, having been completed and accepted, the consideration to be furnished by the Company, so as to secure the building of the Road in the State by the completion of 40 miles, before being entitled to its promised guarantee, having been so furnished, the work having been done and paid with by the money procured by

the discount of the Bonds, and the State now enjoying the advantages of the road built by the Company, it has no right, in justice and equity, to refuse the payment of its endorsement on the Bonds.

The defense of the State is not based upon any accusation of fraud on the part of the holders of the Bonds, nor of the Company, in obtaining possession of the same with the signature of the Governor. The defense does not allege nor pretend that the work promised by the Company has not been performed ; it does not allege any want of consideration ; it does not show that it protested against the manner in which the Company fulfilled its obligation. The existing facts show, on the contrary, that every requirement of law must have been complied with, and the existence and use of the Road, for more than four years, create the irresistible legal presumption against which no proof is made, that the Bonds endorsed by the State for the completion of the 40 miles constitute a just and valid debt against which no technicality can prevail. Entering in the vast field of suppositions, the Court will say with us, that if any delay has ever been granted in the fulfilment of some condition, the objection was waived, on the fulfilment of that condition ; and the acquiescence of the State is a perfect ratification, of which the completion of the Road makes an irresistible bar to any objection, after four years, of

the acceptance of the work. Even supposing that to aid the Company, the Bonds, or a part of the $500,000 authorized to be guaranteed on the completion of 40 miles, may have been advanced on February 1st, 1871, when 15 miles were completed, or on March 1st, when 26 miles were completed, the endorsement by anticipation does not destroy the obligation to pay afterwards, when at a later period (a few weeks, perhaps a month) the Company fulfils its contract and furnishes the consideration required to obtain the guarantee of the State. Even considering the Governor as nothing else but the agent of the State, his endorsement by anticipation becomes good as soon as the consideration for such endorsement is furnished and accepted.

If A as agent of B, authorized to endorse the note of a builder, to enable him to pay his workmen, as soon as the house will be covered, does endorse the note before the slates are nailed on the rafters, the endorsement is good and binding as soon as the covering of the house is completed ; and no court would listen to the defense made by the endorser that the endorsement was signed before the covering had been completed.

The object is to secure the completion of the consideration required, and its fulfilment is a bar to any objection on account of delays granted or payments made by anticipation.

These are broad principles of law which cannot be denied nor controverted.

Let us now come to the defense made in the name of the State and see how its legal advisers can exonerate it from its obligations against its will expressed in the law, and against its liability for work performed under the promise of its guarantee for the payment.

The defense is based on the following grounds:

1o. That the guarantee *was absolutely null and void, ab initio*, and in violation of the constitutional amendments limiting the State debt to 25 millions, *and that limit was exceeded at the time.* This fact is not proved.

2o. That the Act No. 26 allowing $12,500 of Bonds per mile, imposed certain conditions, viz, &c., &c., 1o, that the grant should be accepted within 90 days—2o, that a survey and location was to be made within 8 months of the acceptance—3o, that 40 miles were to be constructed within one year from the survey—4o, that the entire Rail Road was to be constructed within 3 years and 5o, to Houston within 6 months thereafter.—6o, that in case of failure the obligations of the State would cease—7o, that their first section of 40 miles was not completed within the time required, to wit: the 18th of January, 1871—8o, that no second section was completed.

The supplemental answer alleges "that the notes offered to be funded *are not included among the obligations permitted to be funded, and are not the Bonds of the State.*"

The Plaintiffs offered in evidence the Bonds with the endorsement of the Governor and the testimony of the President of the Citizens' Bank, to show that the Bonds were purchased in New York in April, 1872, for valuable consideration.

The first testimony offered by the attorneys of the State was a certificate of Mr. Bailey, engineer, to show, what? *That on the 1st of April*, 1871, 39 15[100 *miles of the Road had been completed.*

There the Defendants close their evidence.

ON THE INADMISSIBILITY OF THE EVIDENCE OFFERED BY THE STATE.

If we could have anticipated that the Defendants would satisfy themselves with the proof of such a fact, which, after all, is more favorable to Plaintiffs than to the Defendants, we might have waived the right to object to the introduction of any evidence of the kind; but as we may have made the objection and consider it valid in law, we maintain it in argument.

To the testimony offered, Plaintiffs objected on the grounds mentioned in the bill of exception on file.

They had purchased the Bonds in a distant market for a valuable consideration, at a time not suspicious, upon the strength and credit of the obligation of the State of Louisiana given in strict compliance with the term of the act, and being innocent third persons in the transaction, cannot suffer the State of Louisiana to oppose a plea wherein its own turpitude is directly set up. The Road had then been completed for more than a year at least ; it had been in good active operation for all that time, and certainly there is no one that doubts that it was completed by means of the money raised from the sale of these second mortgage Bonds, that would not have been sold but for the obligation of the State to pay them. The State should not now be permitted to come in and plead its own wrongful act, its own malpractice ; to prove by an officer of the Company that the Bonds were not issued as established by the written evidence of the Governor and Secretary of State, a public act done and made in accordance with the act, to vary the Bond and guaranty by parol evidence of one man, a bridge builder, and a memorandum of a Rail Road engineer. Sec. 10 of the act, M. 26, 1869, stipulates "that the signature of the Governor to the guarantee shall be conclusive evidence in favor of the holder of every Bond so certified that the conditions of this act have been complied with on the part of the Company, and that said Bonds have been

duly made and regularly certified and issued pursuant to the provisions of this act. And every certificate of guarantee, when so subscribed, shall be a valid and binding obligation of the State of Louisiana in favor of whomsoever shall, from time to time, be the holder of the Bond bearing such certificate ; and the State of Louisiana hereby pledges its public faith and credit to the performance of such guarantee according to its terms."

Are not the terms of this act binding enough ? Did not the State intend to have this Rail Road built by means of pledging its "public faith and credit ?" Did the State of Louisiana devise ways and means to entrap capitalists to invest their money, benefit the State, and afterwards to refuse any reimbursement, even the 60 cents on the dollar ? Is the wording and are the terms of the funding act itself as strong ? If once the act of the Legislature, approved by the Governor, attested by the Secretary of State, is out, the other is also ? Is one more solemn and binding than the other ? Are neither of the acts and due approvals of no weight and value, and an obligation of the State to do nothing ? Is this all the weight that a written guarantee has ? Is this to be the course of the State with its obligations ? Has it ever before been this way with the pledge of public faith and credit ? Can a third person be met, years afterwards, when the benefits arising from the issu-

ance of such obligations have been fully enjoyed, by the plea of the State, that we did agree to pay this obligation, and then that we can only pay in Bonds at 60 cents on the dollar, really worth much less than that, and finally with the answer that we will pay nothing?

Section 7 says: "such approval, by the Governor, "*shall be conclusive as to the sufficiency of the form* "*and execution of said mortgage, and so to its con-* "*formity to the provisions of this act.*" Notice also what it says about the wording. Would any capitalist, in the wide world, ask for a better evidence of a State obligation?

There is no proof that this is not the guarantee signed by the Governor and attested by the Secretary of State. It is indeed no forgery, but the binding obligation of the State, given in due form, bearing evidence of completeness in itself, all in due form, and under the law "conclusive as to its conformity to the provisions of the act." If any part of the act has no value, sections 7 and 10 have. They are unambiguous and full of meaning. The Charter of the Rail Road, or the Constitution of the State, might as well be invoked as not binding upon the people of the State. As well might a litigant assert that a judge did not mean what he said when he decided against him. There must be some value to evidence, there must be some value to a signature, and it

would seem that there must be some end to error by pleadings in Court. Defendant cannot be heard when, by parol evidence, the attempt is made to contradict, vary or invalidate its own public act, the terms of which are clear and expressive. It cannot say these Bonds and the guarantee are full and complete evidence in themselves, and then to say that the same Bonds and guarantee are not any obligations, and I want to prove to you that they are evidence of my own bad faith, not good and genuine. Who can argue of his own turpitude in Court? What suitor or defendant can take advantage of his own wrong? at least by such a plea? We cannot sue the State, save under a special statute giving permission, and one statute, even then, would not be more binding than another, and all are equal and binding, until declared unconstitutional. So far as the State of Louisiana is concerned, the signature of the Governor and Secretary of State are proof that the State accepts the Rail Road and the contract with all its stipulations. As the State bound itself, so shall it be bound.

"A party's signature, in an act, is proof that he accepts it with all its stipulations." Barker vs. Banks, 15 L., 453.

The official certificate of the State, through its proper officer, having been given, it cannot now be listened to as a witness to prove its turpitude. "*Ne-*

mo allegans suam turpitudinem est audiendus." The rendition of a judgment, on a certain day, as shown by the Record, cannot be disproved by parole. Nolan vs. Babin, 12 R., 531. Paral is inadmissible against or beyond what is mentioned in a written act, or as to what may have been said before, or at the time of making, or since. C. C. 2,256, C. C. p. 310, art. 242, 1 N. S. 641, 5 N. S. 694. 16 L. 129, 18 L. 43, 19 L. 381, 4 R. 416, 1 A. 108. "The expressions in an act control all those anterior or verbal, and the latter cannot be offered to contradict the former." 5 N. S. 4, Bayon vs. Tombs. "The acts which parol cannot contradict are those creating conventional obligations. 5 A. 550. Derouin vs. Segura. A failure of consideration, which a written agreement shows had passed at its date cannot be proved by parol. Heath vs. Locke, 18 L. 68. A written agreement is conclusive between parties and privies, and they are stopped from contradicting it. A notary is bound by his certificate. The State is bound by the signature of its duly authorized Governor and Secretary of State. It is a doubtful proceeding to allow the opposite to be the law relative to pleadings and evidence.

It would seem clear that Defendants cannot be allowed to introduce such evidence as was tendered by them, and further, that even if they were, it is of no weight against Plaintiff's right to recover from the State.

The Bonds are negotiable security, bought in good faith, for a valuable consideration by the holder. "A guaranty endorsed on a negotiable security before delivery is negotiable with the instrument on which it is endorsed." Tappan vs. Cleveland, Columbus and Cincinnati R. R. 4 West. L. Mo. 67. &c. 9. Hitts. L. J. 313. "A bond issued by a rail road company, payable in blank, is a negotiable instrument, having all the qualities and incidents of commercial papers. White vs. Vermont et Mass. R. R. 21. H. 575. Woods and Lawrence County, 1 Bl. 386. Murray vs. Lardner, 2 Wall. 110. "The bonds of a municipal corporation with coupons annexed, payable to bearer, are commercial instruments. The holder is not affected by securities existing between the original parties." Moran vs. Miami County, 2 Bl. 722. Mercer County vs. Hackett, 1. Wallace 83. Gelpeke vs. Dubuque, 176. Meyer vs. Muscatine, 385. We claim that the case of *Mercer County vs. Hackett*, 1. *Wallace* 83, fully and certainly decides the question of inadmissibility of evidence offered by defendant, proves the right of recovery of plaintiff against defendant as a State obligation, and urgently request the Court to read the decision in full which quotes many authorities quite in point. Also, 3 Wall. 327, in Thompson vs. Lee County. Rockmuhl vs. Pittsburg, 7 Pitts. L. J. 146. See 13. Pets. 607, 7. H. 172. These bonds are negotiable by statute 4,

H. 526. See U. S. vs. Boyd, 5. H. 29, on the evidence under the pleading, see 210, 271. C. P. 329, 20 A. 193, 21 A. 579.

If the State guaranteed the Bonds to give them credit, no other consideration is necessary to support an action. See Vowell vs. Lyles, 1. A. C. C., 654.

The doctrine of Estoppel can be applied with undoubted consistency. See 3d Wall. 654, where it is said that the "Power to issue bonds being shown, the municipal corporation so against *bona fide* holders of them for value, is estopped to deny that the power was properly executed."

"The doctrine of Estoppel applies to a State as well as to a private person. Vermont vs. Society for the Propagation of the Gospel, 2d Pa. 546." An estoppel *in pais* arises only when the party against whom it is alleged, has by his declarations, acts or omissions, misled the other party, to his prejudice, if he himself be allowed to disavow the legitimate consequences of his own act. Griffith vs. Clinton Line extension Rail Road Co. 1 West L. M. 31. The Freeman vs. Buckingham, 18 H. 182.

Before abandoning this point we cannot refrain quoting some parts of the case of Mercer County vs. Hackett, Wallace 83.

Page 83 et seq: "By act of Assembly passed in "1852, the Legislature of Pennsylvania autorized "the commissioners of Mercer County, in that State,

" to subscribe to the stock of the Pittsburg and Erie " Rail Road, which road, *if built, would pass through* " *their county and benefit it.*" The act, however, contained this proviso:

"*Provided* that the subscription shall be made " *subject to the following restrictions, limitations and* " *conditions,* and in no other *manner or way whatever* " *viz,* &c., &c.

" *Rightly* or *wrongly, with authority* or *without it,* " the Bonds, to the extent of several thousands of " dollars, were issued, &c.

" A number of the Bonds having got, *bona fide and* " *for value paid,* into the possession of one Hackett, " and the coupons, themselves also payable to bearer, " being due and unpaid, he sued the county of " Mercer upon them. Having put the Bonds and " coupons in evidence, the county now offered to " prove *that no such recommandation as required by* " *the act was made by the grand jury* &c., &c.; and " further, that while, by the provisions of the act, the " Rail Road company was required to accept "An act " fixing the gauges &c.," before it would be entitled " to the benefit of the act, authorizing the subscrip- " tion, *the Company,* by a resolution of the stock- " holders *had refused to accept those provisions* &c., " all this being offered for the purpose of showing " that the commissioners of Mercer County *had acted* " *illegally in making the subscription and issuing the*

" *Bonds*, and *that they issued the same without a* ..-
" *ity of law*, so that the *Bonds are not binding upon*
" *the county*. The company proposed to prove
" *that the Bonds were procured from the county of*
" *Mercer by misrepresentation and fraud, and were*
" *not binding upon it &c.*

(Identically the case at bar, and even a stronger one against the holder of the Bonds, on account of the accusation of fraud.)

The Court below refused to let such evidence be given, *and the correctness of the ruling is now the point considered.*

Page 92, by the Court (Mr. Justice Grier.)

" *The Bonds declare on their face* that the faith,
" credit and property of the county is solemnly
" pledged, *under authority of certain acts of the assem-*
" *bly*, and that *in pursuance of said acts the Bonds*
" *were signed by the commissioners of the county.* They
" are, on their face, *complete and perfect;* exhibiting
" no defect in form and substance; and *the evidence*
" *offered is to show that the recitals on the Bonds are*
" *not true*, and that no law exists to authorize their
" issue, *but that the Bonds are not made in pursuance*
" *of the acts of assembly authorizing them.*

" *We have decided*, in the case of commissioners of
" Knox County vs. Aspinwall, that *when the Bonds,*
" *on their face*, import a compliance with the law
" under which they were issued, *the purchaser is not*
" *bound to look further.*

P. 97. "The Court did not err in refusing the evidence."

The case at bar is stronger in favor of the Plaintiffs, because, not only the Bonds show a compliance with the law, but the law itself says before hand that the certificate of the Governor *will be conclusive evidence of the fact.*

It is, and has always been, the prevailing usage, to make Rail Road subscription Bonds negotiable. *They are intended to be sold in the money markets of the world, and they derive an additional value from being negotiable.* As many of the elements of circulation as possible are incorporated in them. It is the obvious interest of both the city and the company receiving them, that they should be negotiable. Otherwise they would be comparatively valueless, and the very purpose for which they were issued, to-wit: To raise money either by selling or pledging them, would be utterly defeated. *It must be presumed that the members of the Legislature who passed the law authorizing their issuance, had knowledge of the prevailing usage in this respect.*

Maddox, et al. vs. Graham & Knox, 2 Metcalf, Ky. 56.

Knowing this usage, if they had not intended that the Bonds should be negotiable, they would have so stated. In the case of Morris Canal and Banking Co. vs. Fisher, 1 Stockton chy., 667, in discussing

this question, the Court says : " That *to hold the con-* " *trary, would be to strike a blow at the credit of the* " *great mass of public securities now in the market, the* " *consequence of which, it is impossible to predict.*"

In the case of Clark vs. City of Janesville, 10 Wis. 136, the Court say, that Bonds with coupons attached are intended to be thrown into the markets of the world, and sold to raise money, and to pass from hand to hand by delivery, and by common usage are so passed, and though not strictly commercial paper like bills of exchange, yet they circulate in market much like those instruments and are intended to answer the same purpose ; that *being transferred by delivery, a complete title is conferred upon the holder, relieved from existing equities.*

In Clark vs. City of Des Moines, 19 Iowa 209, a distinction is drawn between city warrants and Bonds issued on time, by towns, cities and counties to Rail Road companies. In speaking of such Bonds, the Court say, that *they are made and issued for the express purpose of raising money by their sale, and the attainment of this object would be embarrassed or defeated, if they were subject to equities in the hands of bona fide holders.* They are therefore held to be negotiable with all the incidents of negotiability.

See also Clapp vs. County of Cedar, 5 Iowa 15.

Mechanics' Bank vs. New York and New Haven Rail Road, 3 Kernan 599.

Dillon on Corporations, 1 vol., sec. 405 and cases cited in note, 8 Gray 575; 4 Duer 480; 21 How. 575, Id. 539.

Although by common legal intendment, the word Bond implies an instrument under seal, not negotiable under the law merchant, yet where Bonds are issued for the purposes we have mentioned, they are negotiable instruments in such a sense *as would exempt them in the hands of a bona fide holder, from defences which might have been made against the Rail Road Company.*

State of Illinois vs. Delafield, 8 Paige 527.

Same on appeal, 2 Hill 159, 177.

Bank of Rome vs. Village of Rome, 19 N. Y. 20; 3 Kern 625, 627.

And they may be issued either directly to the Rail Road Company, or to some third person to raise money for the purpose of paying the subscription made.

Treadwell vs. Commissioners, 11 Ohio St. 183.

It is manifest that the Legislature conferred the power upon the city authorities to issue Bonds to the Vicksburg, Pensacola & Ship Island Rail Road Company, which should be negotiable and have all the incidents of negotiability. They were to be payable on long time and the interest was to be paid by a tax levied for that purpose every year. As a matter of fact, the Bonds were issued, are negotiable in form, and

it is admitted that the defendant in error is a *bona fide* holder, without notice. *Under these circumstances, it is not competent for the city to show, either by her minutes or otherwise, that the necessary vote was not given to authorize their issuance.* The Mayor and Aldermen are the judges whether the necessary votes have been cast. By their organization and general duties, exercising all functions with reference to the police and fiscal interests, and representing the inhabitants of the city, they are necessarily the only persons who can or ought to decide this question. When they have so determined, *and the Bonds on their face import a compliance with the law, the purchaser has the right to assume, that all necessary conditions to the grant of the power have been obtained and the corporation is estopped from denying their validity.*

Commissioners of Knox Co. vs. Aspinwall, 21 How. 539.

Moran vs. Miami Co., 2 Black, 722, 724.

Supervisors vs. Schenck, 2 Wall. 772.

Rogers vs. Burlington, 3 Wall. 654.

Cincinnati vs. Morgan, 3 Wall, 275.

Mercer County vs. Hackett, 1 Wall. 83.

Meyer vs. Muscatine, 1 Wall. 385.

Bissel vs. Jeffersonville, 24 How. 287.

Gelpeke vs. Dubuque, 1 Wall. 175, 203.

Pendleton Co. vs. Amy, 13 Wall. 297.

St. Joseph Township vs. Rogers.

Judge Dillon, speaking of this decision, of 24 How. 287, says: "This is clearly right, for the reason that the Common Council were the body to decide the preliminary fact; and because also, according to the rule before stated, *the fact was one not of a nature to be ascertained by purchasers in the markets, to whom the Bonds were designed to be sold.*"

Dillon on Corporation, Vol. 1, p. 514, note 1.

A *bona fide* holder has a right to presume that every condition precedent has been complied with, and all that can be required of him is knowledge of the law authorizing the issue of the Bond.

City of San Antonio vs. Lane, 23 Texas, 405.

33 Mo., 440.

18 Gratton, 338.

29 Conn., 124.

24 Ind., 457.

25 Ill., 317.

5 Iowa, 15.

When a corporation has power under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume that they were issued under the circumstances which give the requisite authority; *and they are no more liable to be impeached in the hands of such holder than any other commercial paper.*

City of Lexington vs. Butler, 14 Wall. 282.

The plaintiff is the *bona fide* holder of the coupons

set out in the pleadings without actual notice of any irregularity or want of power in their issuance, *and the city is therefore estopped to show any irregularity or want of power, by the corporation records or otherwise.*

Bank of Rome vs. Village of Rome, 19 N. Y. 20.

ON THE LIMITATION OF THE STATE'S INDEBTEDNESS.

In the suit of "Thompson vs. Lee County," 3 Wall. p. 327, the same principle is decided; but it involves also the question whether a third *bona fide* holder can suffer from the fact that the limit of the debt of the State authorized by law, may have been exceeded.

Page 327: "The Constitution of Iowa, made in "1846, and which invested the General Assembly "with all the Legislative power of the State, or- "dained thus:

"General Assembly *shall not in any manner create* "*any debt or debts*, which shall, singly or in the ag- "gregate with any previous debt or liabilities, *ex- "ceed the sum of one hundred thousand dollars except* "*in case of war*, &c.

"With the Constitution in force and after certain "statutes had been passed by the General Assembly "relative to the corporate powers of counties and "their right to execute Bonds for Rail Roads &c., it "was decided, or so said to be, at an election held

" in Lee County, to take stock and issue Bonds to " three different Rail Roads, $150,000 to each.

P. 329. " At a certain time the coupons were no " longer paid. A number of them being in the " hands of E. Thomson, cut off from the Bonds to " which they had been originally attached, he " brought suit in the Federal Court to recover them, " not producing however the Bonds to which they " had originally belonged."

The Court charged :

" 1°. That the Bonds or coupons were issued " without authority of law and were void.

" 2°. That the Curative Act of January, 1857, " gave no validity on the Bonds &c."

The County had judgment, the matter was now on error here, where the *same kind of questions* that have so abundantly been discussed in this Court of late :

" In *Mercer county vs. Hackett.* 1 *Wallace* 83.

" *Gelpeke vs City of Dubuque.* 1 *Wallace* 175.

" *Meyer vs. Muscatine.* *Id. p.* 384.

" *Seybert vs. City of Pittsburg.* *Id. p.* 272.

" *Van Hoitrup vs. Madison City.* *Id. p.* 291.

" *Murray vs. Fardner.* 2 *Wallace* 110.

" *Sheybogan county vs. Parker.* 3 *Wallace* 93.

" *Havemeyer vs. Iowa county.* *Id. p.* 294.

were raised and discussed by briefs anew.

By the Court : (Mr. Justice Davis.)

P. 330. "*There is hardly any question* connected " with the species of securities on which this kind " of suit is brought *that has not been discussed and de-* " *cided by this Court ;* and *it is unnecessary* to do more " in this opinion, *than reaffirm the general doctrine of* " *the Court on the subject,* so far as to apply to the " case in hand without attempting to restate the " reasons which were given for our decisions.

P. 331. "Bonds with coupons, payable to bearer, " *are negotiable securities and pass by delivery, and in* " *fact, have all the qualities and incidents of commer-* " *cial paper.*

"Judgment reversed &c."

The Defendants have, unfortunately for their cause, quoted the case of *Diamond vs. Lawrence county* (37 Pr. State 353.)

1°. It is a judgment of State Court, not of the United States Supreme Court.

2°. In this decision the Judge admits that he knows that "*on this ground we stand alone. All the Courts, American and English, are against us.*"

3°. The United States Supreme Court, speaking of that decision in the case of Mercer County vs. Hackett, (p. 94) says :

"*Although we doubt not the facts stated* as to the " atrocious frauds which have been practiced, in " some counties, in issuing and obtaining these " Bonds, *we cannot agree to overrule our own decisions*

" *and change the law to suit hard cases.* The epid-
" emic insanity of the people, the folly of county
" officers, the knavery of Rail Road speculators are
" pleas which might have just weight *in an applica-*
" *tion to restrain* the issue and negotiation of these
" Bonds, *but cannot prevail to authorize their repudia-*
" *tion after they have been negotiated and have come*
" *into the possession of bona fide holders.*"

" *We therefore maintain that the evidence offered*
" by the Defendants to prove that the Bonds offered
to be funded are not valid obligations of the State,
" *ought to have been rejected.*"

In the case above quoted of *Sheybogan county vs. Parker*, 3 *Wall.* 93, it is stated in the caption : " In
" this case the Statute enacted that any Bond issued
" its provisions shall be *under full and complete evidence,*
" *both in law and in equity, to establish the indebtedness*
" *of the County.*"

As Judge Grier remarks at p. 96, (same case) the commissioners who have signed such certificates
" are the lawful agents of the people for this special
" purpose &c., &c., and having so acted the County
" cannot now repudiate their acts."

In this case the objection was that the act was unconstitutional and void, and the Court decided the contrary.

In addition to the above authorities we have the late decision of this tribunal in the case of Humbolt

Township vs. Long et al., which we will refer to hereafter.

ARGUMENT ON THE MERITS.

The objections contained in the bill of exceptions filed by Plaintiff to the testimony offered, having been overruled, (transcript p.) the question is still open before this Court, and we hope Your Honors will maintain the position taken by the Citizens' Bank.

But even if the evidence was to be admitted, we contend that it cannot invalidate the responsibility of the State, and we rely upon the considerations contained in all the authorities above quoted, which, denying the right to prove the facts alleged in defense, constitute an admission that the existence of those facts were no objection to the rights of the *bona fide* holder to claim the amount of the Bonds in his possession.

The judgment appealed from says: (Transcript page 77).

" *But for the constitutional amendment the endorse-*
" *ment of guarantee would bind the State* as to re-
" lator or any *bona fide* third holder of said Bonds,
" whether the stipulations of said act of 1869 had
" been complied with or not by said company; *be-*
" *cause section* 10 *of said act provides* that the

" signature of the Governor to the certificate of " guarantee shall be conclusive evidence in favor of " the holder of every Bond so certified, that the con- " ditions of this act have been complied with on the " part of the Company, and that said Bonds have " been duly made and regularly certified and issued, " pursuant to the provision of this act, and every " such certificate of guarantee, when so subscribed, " shall be a valid and binding obligation of the State " of Louisiana in favor of whomsoever shall, from " time to time, be the holder of the Bonds bearing " such certificate, and the State of Louisiana hereby " pledges its public faith and credit to the perform- " ance of such guarantee according to its terms."

The Court sees at once that the whole weight of the decision of the Supreme Court bears on the constitutional question : " *Whether the pretended limita-* " *tion of the State's indebtedness to 25 millions is a bar* " *to the claim of the Bank on a Bond issued by virtue* " *of a constitutional statute, and bearing on its face the* " *certificate of the Governor that the faith of the State is* " *duly pledged to pay the same ?*"

We maintain the contrary and specially refer this Honorable Court to the following decisions already quoted in this brief.

1°. *Vowell vs. Lyles.* 1 A. C. C. 654.

" If the State guaranteed the Bonds to give them " credit, *no other consideration is necessary* to support " an action."

2°. 3d *Wall.* 654.

"The power to issue Bonds being shown, the cor-
"poration (the State in this case) is estopped to
"deny that the power was properly executed."

3°. *Mercer County vs. Hackett.* 1 *Wall.* 92.

"We have decided in the case of commissioners
"of Knox County vs. Aspinwall, that when the
"Bonds, *on their face, import a compliance with the law*
"under which they were issued, *the purchaser is not*
"*bound to look further.*

4°. *Maddox et al. vs. Graham & Knox,* 2 *Met-calf Ky.* 56.

"It must be presumed that the members of the
"Legislature who passed the law authorizing the
"issuance of the Bonds had knowledge of the pre-
"vailing usage in this respect."

5°. *Commissioners of Knox County vs. Aspinwall,* 21 *How.* 539.

"When the Mayor and Aldermen (in this case the
"Governor of the State) have so determined, and
"the Bonds, *on their face, import a compliance with*
"*the law,* the purchaser has the right to assume that
"*all the necessary conditions to the grant of the power*
"*have been obtained,* and the corporation is estopped
"from denying their validity."

6°. *City of Lexington vs. Butler.* 14 *Wall.* 282.

"When a corporation has power, under any cir-
"cumstances, to issue negotiable securities, *the bona*

"*fide holder has a right to presume that they were is-*
"*sued under the circumstances which give the requisite*
"*authority*, and they are no more liable to be im-
"peached in the hands of such holder *than any other*
"*commercial paper.*

7°. *Bank of Rome vs. Village of Rome.* 19 *N. Y.* 20.

"The plaintiff is the *bona fide* holder of the
"coupons set on in the pleadings, *without actual no-*
"*tice* of any irregularity or *want of power* to their
"issuance, and the city is therefore estopped to show
"any irregularity or want of power &c."

8°. *Thompson vs. Lee County.* 3 *Wall.* 327.

"The Constitution of Iowa had ordained: *That*
"*the General Assembly shall not in any manner create*
"*any debt or debts, which shall exceed the sum of one*
"*hundred thousand dollars*, except in case of war."

The same defense was made *that the* "*Bonds were*
"*issued without authority of law, and were void.*"

The Court, after referring to eight cases involving the same principle, says: (p. 330) "It is unneces-
"sary to do more in this opinion, *than reaffirm* the
"general doctrine of the Court on this subject &c."
(Judgment in favor of the County reversed.)

9°. *Sheybogan County vs. Parker.* 3 *Wall.* 93.

"The commissioners who have signed the certi-
"ficate (the Governor in this case) are the lawful
"agents of the people for this special purpose, and

2°. 3d *Wall.* 654.

"The power to issue Bonds being shown, the cor-
"poration (the State in this case) is estopped to
"deny that the power was properly executed."

3°. *Mercer County vs. Hackett.* 1 *Wall.* 92.

"We have decided in the case of commissioners
"of Knox County vs. Aspinwall, that when the
"Bonds, *on their face, import a compliance with the law*
"under which they were issued, *the purchaser is not*
"*bound to look further.*

4°. *Muddox et al. vs. Graham & Knox,* 2 *Metcalf Ky.* 56.

"It must be presumed that the members of the
"Legislature who passed the law authorizing the
"issuance of the Bonds had knowledge of the pre-
"vailing usage in this respect."

5°. *Commissioners of Knox County vs. Aspinwall,* 21 *How.* 539.

"When the Mayor and Aldermen (in this case the
"Governor of the State) have so determined, and
"the Bonds, *on their face, import a compliance with*
"*the law,* the purchaser has the right to assume that
"*all the necessary conditions to the grant of the power*
"*have been obtained,* and the corporation is estopped
"from denying their validity."

6°. *City of Lexington vs. Butler.* 14 *Wall.* 282.

"When a corporation has power, under any cir-
"cumstances, to issue negotiable securities, *the bona*

"*fide holder has a right to presume that they were is-*
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"agents of the people for this special purpose, and

" having so acted, *the County cannot repudiate their* " *acts.*"

10 °. *Humboldt Township vs. Long et al. October Term* 1875.

" The third question is answered by what was de- " cided in the case of Marcey vs. the Township of Os- " wego &c. *The Bonds are not invalid in the hands of* " *a bona fide* holder, by reason of their having been " voted and *issued in excess of the statutory law.*"

We will further remark that no proof is made that those Bonds were issued in excess of 25 millions.

On the contrary, it is established in the petition for a rehearing that said indebtedness was reduced in one instance by $2,500,000 in Bonds of the same Chattanooga Rail Road Company declared null and void.

One of the judges says positively (Transcript p. 91): " The contract, from which these obligations " spring, was made by Art. No. 26 of 1869. *At that* " *time there was no constitutional restriction* upon the " power *of the General Assembly to create debts.*"

Under all the authorities above quoted, it cannot be denied that the Relator, as a *bona fide* purchaser of the Bonds, had a *vested right* which no subsequent statute of the State of Louisiana could invalidate or impair. The certificate of the Governor on the back of the Bonds made them *executed contracts* between the State and the holder.

Cooley on "Constitutional Limitations," at page 275, speaking of a decision previously quoted, says:

"The leading decision settles two points:

"1o. *That an executed contract is within the pro-*
"*vision of the 10th clause of the Constitution.*

"2o. *That it protects from violation the contracts of*
"*States equally with those of private individuals.*"

P. 257: The chief restriction is *that vested rights*
"*cannot be disturbed;* but in its application as a
"shield of protection, the term, '*vested rights,*' is not
"used in any narrow or restricted sence, as import-
"ing a power of legal control only, *but rather as*
"*implying a right which it is equitable the Government*
"*should recognize and of which the individual cannot*
"*be depriced without injustice.*"

In the case of Jefferson Branch Bank vs. Kelsy, (2d Black's rep., p. 443) Mr. Justice Wayne remarks:
"It has never been denied that the Supreme Court
"of the United States has an Appellate power to
"revise the judgment of the Supreme Court of a
"State whenever said Court shall adjudge that, not
"to be a contract, which has been alleged, in the
"form of legal proceedings by a litigant, *to be one*
"*within the meaning of that clause of the Constitution*
"*which inhibits States from passing any law impair-*
"*ing the obligations of contracts.*

The decisions quoted by the Judge in support of the opinion of the Court are the following: "Billings

vs. Providence Railroad Bank—Charles River Bridge Co.—Gordon vs. Appeal Tax Court—Richmond Railroad Co. vs. Louisa Railroad Co., 13 Howard, 71.

But it is further pretended that the date of the certificate being anterior to the 1st of April, 1871, the 40 miles of railway were not then completed.

This is not the question, nor the point involved. We all know that the Bonds, in such cases, are prepared, printed and signed before hand so as to be distributed when needed ; but nothing shows that they were delivered before the road was completed to the extent required, and even admitting that they might have been given before the completion of the road, its continuation, after the 40 miles, is a complete and satisfactory fulfilment of the obligations contracted by the Company, and its acceptance a full and binding ratification on the part of the State.

We make the supposition of a payment by anticipation merely to show the strength of our position, for nothing shows that the 1st of April was a fatal date and that the first 40 miles ought to have been completed before. The evidence offered by Defendants is neither positive nor corelative on that point and their argument and conclusion are simply imaginary.

As regards the other allegations of facts or omis-

sions fatal to the rights of the Plaintiffs, no evidence has been offered and they must be considered as abandoned. Even on the allegation that the act was contrary to the constitution, because it was passed after the limit of 25 millions of debt had been exceeded by the State, not the least particle of evidence has been introduced or offered;

Nay, the Defendants admit that the restriction about the 25 millions was adopted only in November, 1870, and the Act authorizing the issue of the Bonds and the guarantee of the State was approved in February, 1869, which is the ground for the judge's *dictum* above quoted. (p. 91 of the transcript.)

Defendants further allege, in their supplemental answer, as before stated, that the Bonds offered to be funded *are not included among the obligations permitted to be funded*, and are *not the Bonds of the State*.

The defense is a mere technicality in relation to the form of the Bonds, but does not touch upon the principle of liability on the part of the State.

What matters the form of the Bonds if they constitute *a valid obligation of the State?*

When the whole indebtedness of a man is to be settled by compromise, does the law make any difference between his obligations as drawer and endorser or acceptor?

As soon as the liability attaches whether it be the result of the law, or the consequence of an obligation contracted or assumed by a party, all his obligations are on the same footing and entitled to the same advantages offered to all his creditors.

In this case, as we have shown it, the law declares that the certificate of guarantee, when subscribed by the Governor, *shall be a valid obligation of the State of Louisiana*, in favor of the holder ; and that the State *pledges its public faith and credit to the performance of such guarantee* according to its terms.

What are those terms ?

(Sect. 8) "The payment of the principal of the within Bond, *when due*, and of all the interest thereon, *as it accrues*, is guaranteed by the State of Louisiana."

The law does not say that the Bond shall be protested and notice served on the State ; and even that would not be necessary, the insolvency of the Company being admitted. The law says that payment of the interest, *as it accrues*, is guaranteed by the State of Louisiana. Therefore as soon as it is shown that the Company has not paid, *and it is admitted that it cannot pay*, the obligation of the State to pay is complete and cannot be denied.

Now, if it is an obligation of the State, can the same be funded under the "Funding Act ?"

Shall we, before this tribunal, revert to the prin-

ciples of the interpretation of Laws, and prove by quotations that when its meaning and objet are clear and positive, the words of the law itself, if apparently contradictory, are to be disregarded if contrary to the true spirit and intent of the law ?

In this case the title of the act says :

An act for funding *obligations to the State* by " Exchange of Bonds."

No title could be more comprehensive.

The 1st section says : " For the purpose of fund-
" ing the *floating* and *bonded debt* of the State."

The Legislature does not wish the law to apply to Bonds *only*, for it mentions, besides the bonded debt, *the floating debt of the State*.

What is the meaning of the words, "floating debt ?" The 12th section of the Funding bill may give us an idea of what the Legislature understood as the *floating debt* of the State when it says : " That all grants
" of *State aid* heretofore made (as in this case)
" *whether of Bonds, endorsements, subscriptions of stock*
" *or otherwise*, be repealed."

The Legislature, after enumerating the various forms of the floating debt of the State, including even *endorsements* (as we have it on the Bonds sued upon) adds the words : *or otherwise*, so as to comprehend under the floating debt, all kinds of obligations contracted by the State.

And after such an enumeration, the 13th section

says : " *it being the intent and object of this Act, and of* " *the exchanges to be made,* to reduce and restrict *the* " *whole indebtedness of the State* to a sum not exceed- " ing 15 millions."

Is it an obligation of the State? We think this clear. The State intended to pledge its full faith and credit and it did. It is bound. These Bonds are negotiable, and like a promissory note endorsed in blank. When a promissory note is endorsed *by one who is not a party to it, such a person is held to be an original promissor, guarantor or endorser, according to the nature of the transaction, and the understanding of the parties.*" Rey vs. Simpson, 22 H. 341, 350, 1st Cr. C. C. 436, 504. McCombe vs. Clarke, 3 Cr. C. C. 6.

" If he put his name to the back of the note, at the time it was made, as surety for the maker, for his accommodation to give him credit with the payer, or participate in the consideration, he is deemed a joint maker, also, 15 Pel. 125, authority just above quoted, when the endorser knew the maker to be insolvent, same as above. The intent and meaning of the funding act was to reduce and limit the amount of the State debt, and if obligations of the State are to be left out and unfunded, when will the limit of the State debt be reached and ascertained? The funding bill would be a vain thing. The intent and spirit are to be closely observed. The title says :

"to provide for funding obligations of the State by exchange for bonds," etc., "to limit the indebtedness of the State," etc. This is a State debt, an obligation by which the State stands in the place and stead of another, on certain mortgage Bonds. She has assumed the whole liability and responsibility of the original parties, become a joint drawer and maker, made a State obligation, which was intended to be paid, principle and interest, by the State, and here we desire to recall the attention of this Court to the fact that these are of the first $500,000 Bonds, and not of the $750,000, subsequently paid.

Section 1st of the Funding Act (No. 3 of 1874) begins with these words: "That for the purpose of consolidating and reducing the *floating* and *bonded* debt of the State," etc., the Board of Liquidation is formed. Does not the title of the Act, the intent and meaning of the Act, decide what the purpose of the Act was? to fund the debt of the State, *floating* and *bonded*? Would any other be reasonable, allowable, if the debt is to be ascertained and fixed and funded? the funding of certain debts floating and bonded, and the non-funding other debts, just as certain and fixed, would he be making a discrepancy to harm claimants, violative of a certain pledge of public faith and credit; destructive of public and private interests, dissatisfactory and demoralizing in the extreme to capitalists and others who advance money on

State paper, and who, in the investing of funds, have looked, for protection, to the same law that would fully protect them in dealing with individuals and corporations, in financial and commercial relations precisely like these. The State would not deal thus in a claim against one of her citizens ; and full faith and credit when pledged again, would be construed as a mere attempt to display a guarantee and signature reminding observers of the pronounced scheme of repudiation heretofore practiced. Some one might by chance be entitled to buy and privileged to hold for centennial inspection a State's obligation unjustly unpaid.

In fact what do the Defendants rely upon ?

Merely upon the 3rd Section which speaks " of " Bonds to be exchanged for all *valid outstanding* " *Bonds* of the State, *and all valid warrants* &c.

Is indeed the law to be interpreted by a strict adherence to the words " Bonds or warrants of the State " cited in the 3rd Section, leaving out, as not written in the law, the mention made of other obligations, or by a more liberal and just interpretation of these words " *obligations of the State* " as mentioned in the title and body of the act, so as to include the Bonds guaranteed by the State, on the faith of a mortgage accepted by it and thereby conform to the *true intent and purpose of the law*, whose object, as declared in Section 13, *is to reduce the whole indebtedness of the State.*

Any other construction would destroy and annihilate the operation and result of the act, for, after reducing to 15 millions the Bonds and warrants signed by the State as Drawer, there would remain due, beyond the 15 millions, all sums due for *grants of State aid*, previously made, *all endorsements*, *all subscription of stock*, or otherwise, mentioned in Section 12.

Such an unjust construction would nullify the declaration made in the 13th Section that the *intent and object of the act is to reduce and restrict the whole indebtedness of the State to* 15 *millions*.

You cannot reduce *the whole indebtedness* of the State *if the whole indebtedness* is not brought under the operation of the Funding Act, to be curtailed to 60 cents on the dollar so as to reduce all the *obligations* of the State, as expressed in the title, to 15 millions.

Besides the words *obligations of the State* used in the title of the law, the declaration of the *intent and object of the law* is so precise, that the interpretation of the law can leave no doubt in the mind, that all Bonds due by the State, either as Drawer, or Endorser, or security, or warranter, forming part of the indebtedness of the State, come under the operation of the Funding Act and must be exchanged so as to carry into operation the intent and object of the law.

This act creates and *constitutes a vested right* in the

Citizens' Bank of which it cannot be deprived without violating the Constitutions of Louisiana and of the United States.

As his Honor C. Justice Waite properly remarks in the case of J. H. Kennard vs. State ex rel. P. H. Morgan: "The question is not whether the Courts "below, having jurisdiction of the case and the "parties, have followed the law, but whether the "law, if followed, would have furnished the appellant "the protection guaranteed by the Constitution."

One of the arguments of defense is, "that the "holders are not *innocent holders* in the eye of "the law, because they took the Bonds with the "act authorizing their issue named on the face of "the Bonds *and this act gave all the necessary in-"formation as to the conditions necessary for their "issue.*"

Since they use the argument that the knowledge of the act was a notice to Bond holders, they must grant that the purchasers must have the same confidence in all the provisions of the law, and therefore they must have been satisfied that the same act declaring "that the certificate of the Governor would "be conclusive evidence of the fulfilment of the "obligations imposed, and gave to the Bonds the "character of valid obligations of the State," was to

them a sufficient safeguard against all future objections to their payment in the hands of innocent and *bona fide* holders.

Let the Defendants take any side of the dilemna and it is against them.

If capitalists are to examine and study all the innumerable acts authorizing the issue of such Bonds, you must give them the benefit and advantage of all the clauses of the acts, and in no case are they better secured and guaranteed than in the present case.

If the Bonds are commercial instruments, as the decisions declare, and the capitalists authorized to buy them as such, then nothing can be proved against the validity of the Bonds.

Personal defense might be set up against the holder as to the manner in which he obtained them, if accused of fraud and malpractice, but none against the Bonds and coupons as commercial instruments.

Another characteristic of the defense in this case is the want of argument and authority against our law supported by a dozen judgments of the Supreme Court of this State, and about twenty judgments of the Supreme Court of the United States, maintaining the following principles:

1°. "That public acts creating conventional

" obligations cannot be contradicted by parol " evidence, unless there be an accusation of fraud.

2°. " That Bonds are negotiable securities, and " that a guaranty endorsed on a negotiable security " before delivery, and given according to law, is " negotiable with the instrument on which it is " endorsed.

3°. " That the holder is not affected by secu- " rities existing between the original parties.

4°. " That when the Bonds, on their face, import " a compliance with the law under which they were " issued, the purchaser is not bound to look further; " and that no testimony is admissible to contradict " the certificate of the Governor attesting said com- " pliance."

The argument in this case is a repetition of the course pursued in the first case between the same parties and now pending before this Honorable Court, " that whatever be the principles of law " applicable to individuals, or to conventional obliga- " tions between them, they do not apply to the " State, *simply because* it is the State."

We maintain that in these cases the Court must ignore the personality of the State. If the State has contracted obligations under a law authorizing it to do so, it must be amenable to the tribunals to execute those obligations, as it would have the right to oblige its citizens to execute them. The obligations

are reciprocal and the law must be applied to both parties without distinction.

Full of confidence in the sense of justice and impartiality by which the members of this Court are actuated, we submit the argument presented on behalf of the Citizens' Bank to the Inferior Court, and pray that its judgment be cancelled and annulled, and that judgment be rendered in favor of the Bank in conformity with the prayer of its petition.

After the decision of the Supreme Court a rehearing was prayed for in the following words :

To the Honorable the Judges of the
Supreme Court of the State of Louisiana.

The petition of the Citizens' Bank of Louisiana, praying for a rehearing in this case, respectfully represents :

1°. That the petitioners believe the authorities quoted in this case in support of the principle : " that the certificate of the Governor is conclusive " evidence in favor of third *bona fide* parties that the " Bonds have been issued according to law," apply as well to the constitutional amendment limiting the State debt to $25,000,000 as it does to the work required to be done by the Company before being entitled to said Bonds ; and that therefore said

amendment cannot be considered as affecting the claim of said Bank ; and the validity of said decisions and authorities quoted has again been recognized by the United States Circuit Court in New Orleans, in the suit of Ranger vs. the City of New Orleans, lately decided.

2°. That even admitting the constitutional amendment as affecting the case, we would beg leave to remark that in the $25,000,000 are included the two millions and a half of Bonds issued by the State in favor of the New Orleans, Mobile and Chattanooga and Texas Rail Road, for the purchase of stock, which Bonds have been declared null and void by recent decisions of this Court, and that therefore, deducting said two millions and a half of Bonds, the limit allowed for the State indebtedness was not attained, and consequently the Bonds held by the Citizens' Bank cannot be excluded by reason of their exceeding the limit of $25,000,000.

3°. That as regards the date at which the work required to be done was terminated, petitioners beg leave to refer Your Honors to the telegram received this day (4th of April, 1876) from Wm. S. Williams, late Treasurer of the New Orleans, Mobile and Chattanooga and Texas Rail-Road Company, as follows :

" Error of judgment on guarantee Bonds by Su-
" preme Court in that forty miles were not completed
" within limit fixed by Charter.—*Forty miles were*

" *completed December*, 1870, whereas limitation ran to " January 18th, 1871 "—as appears from the letter of Honorable W. W. Howe hereto annexed for reference.

Upon the authority of the decision of this Honorable Court in *State vs. Clinton*, 26 A. p. 348, in which on a simple suggestion of Counsel for the State, that certain proof could be had, Your Honors remanded the cause, and on suggesting that Your Honors might, in the interest of justice, re-examine this question of fact : that there are other Bonds of the same issue on which the said question migh be raised.

Petitioners pray that a rehearing be granted in this case, and for general relief, &c.

The rehearing was refused and we now ask justice at the hands of Your Honors, and pray for a judgment in conformity with the prayer of the petition, in favor of the Citizens' Bank.

Respectfully submitted,

ARMAND PITOT,

Attorney.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 215.

THE STATE OF LOUISIANA *EX REL.* CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA AND THE STATE OF LOUISIANA, DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD JANIN,
Of Counsel for Plaintiff in Error.

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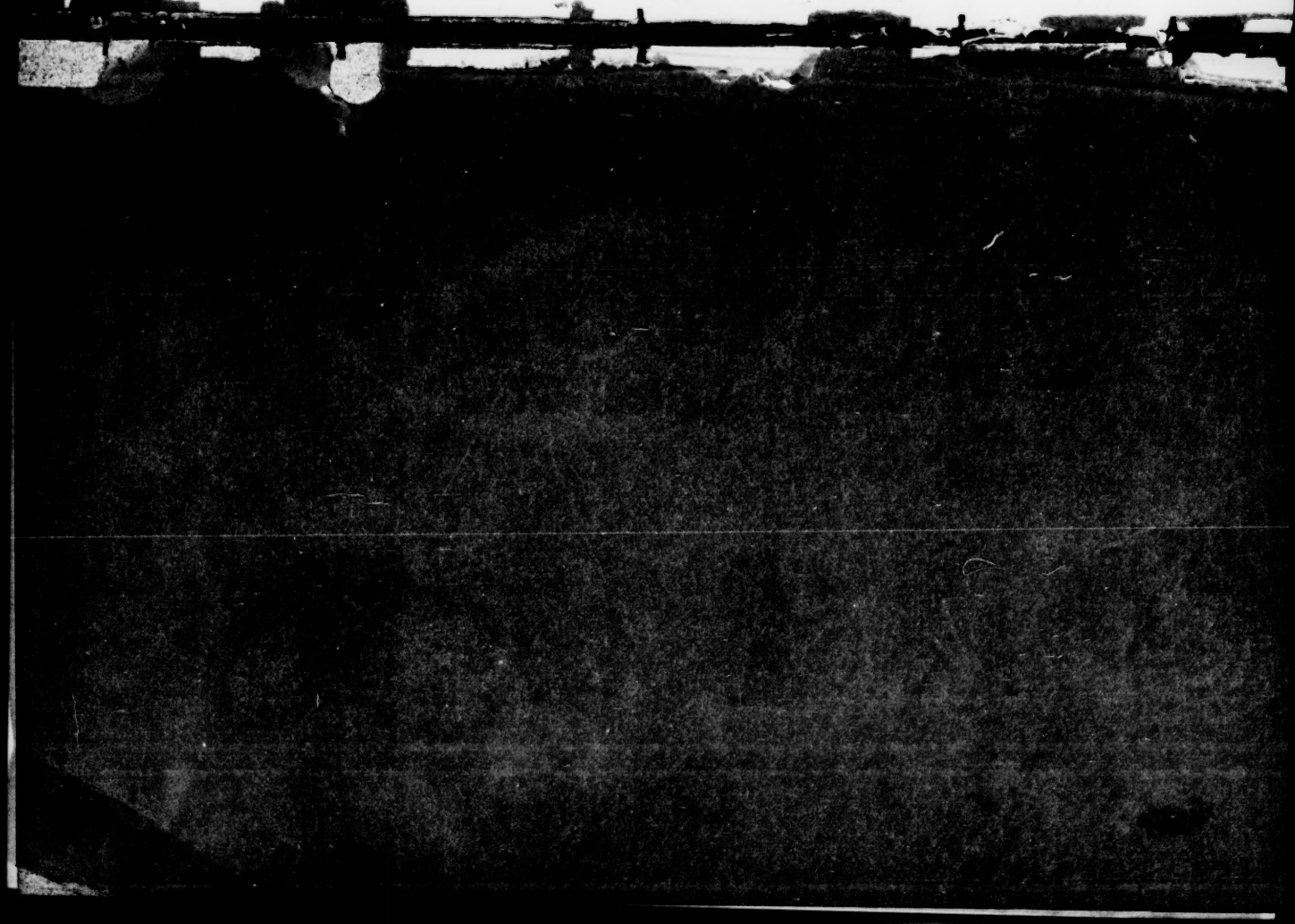

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Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR PLAINTIFF IN ERROR.

This suit was instituted by the relator in the superior district court of the city of New Orleans, under section 3 of act No. 3 of 1874, (Rec., 37,) in order to obtain a mandamus commanding the defendants to fund certain bonds held by the Citizens' Bank, being sixty forty-five year second mortgage bonds of the New Orleans, Mobile, and Chattanooga Railroad, of one thousand dollars each, guaranteed by the State of Louisiana, under an act No. 26 of 1869. The superior district court and the supreme court of the State of Louisiana decided against the plaintiff, holding that the bonds in question were not valid obligations of the State, and were not entitled to be funded under the act establishing the Board of Liquidators. The decision against the

validity of our bonds is based upon the construction given to the amendment of November, 1870, to the State constitution.

The history of these bonds is as follows: They were issued by the New Orleans, Mobile, and Chattanooga Railroad Company, and guaranteed by the State, under the provisions of an act of the General Assembly of the State of Louisiana, approved February 17, 1869, (being act No. 26 of 1869,) and found on pages 22–30 *et seq.* of the Acts of Louisiana of 1869.

The material portions of said act are as follows:

AN ACT to expedite the construction of the railroad of the New Orleans, Mobile, and Chattanooga Railroad Company in the State of Louisiana.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the New Orleans, Mobile, and Chattanooga Railroad Company, a corporation of the State of Alabama, be and it is hereby authorized to make and issue from time to time, as hereinafter provided, its bonds to be known as "second mortgage bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, guaranteed by the State of Louisiana," of such denominations as the company may elect, but to an amount not exceeding in the aggregate twelve thousand five hundred dollars for each and every mile in length of the main line of its railroad, westerly from the city of New Orleans and within the State of Louisiana, which said company shall construct, etc. * *

SEC. 2. *Be it further enacted*, That such bonds shall be numbered consecutively, and shall be made *payable to the State of Louisiana or bearer*, at such time as the company may designate therein—not more than fifty nor less than forty years from their date, etc., * * * * and the place of payment of the principal and interest of said bonds, or any of them, may be either at the city of London, in England, or the city of New York, as the company may elect and designate in such bonds.

SEC. 3. *Be it further enacted, etc.*, That the payment of the principal and interest of such bonds shall be secured by a mortgage, to be executed by said company to the Gov-

ernor of the State of Louisiana, as trustee, for whomsoever shall, from time to time, be holders of said bonds, and also for the State of Louisiana, and for the said company, etc. * * * * * * * *

SEC. 8. *Be it further enacted, etc.*, That when the said second mortgage shall have been so delivered, approved and recorded, and one continuous portion or section of forty miles in length of the said main line of railroad within the State of Louisiana shall have been constructed by the company, and the rails laid thereon, the company may deliver to the Governor of the State of Louisiana five hundred thousand dollars, or one hundred thousand pounds sterling, of such second mortgage bonds, and the Governor shall thereupon subscribe a certificate to be written or printed upon each of said bonds in the following words: "The payment of the principal of the within bond when due, and of the interest thereon as it accrues, is guaranteed by the State of Louisiana, pursuant to the provisions of the act of the General Assembly of said State authorizing such guarantee," and shall affix the great seal of the State of Louisiana to such certificate, and the said seal shall be attested by the signature of the Secretary of State, and the bonds shall then be delivered to the company for its general uses and purposes, authorized by its charter.

SEC. 9. *Be it further enacted, etc.*, That upon the construction of each additional section or portion of forty miles in length of said main line of railroad within the State of Louisiana, the company may execute and deliver to the Governor of the State of Louisiana, a further amount of such second mortgage bonds, equal to twelve thousand five hundred dollars, or two thousand five hundred pounds sterling, as the company may elect, for each and every mile in length of said main line of railroad within the State of Louisiana so constructed, (and for which bonds shall not have been previously guaranteed as herein provided,) and thereupon the said Governor shall subscribe a certificate of guarantee upon each and every of said bonds, etc. * * *

SEC. 10. *Be it further enacted, That the signature of the governor to the certificate of guarantee shall be conclusive evidence in favor of the holder of every bond so certified, that the conditions of this act have been complied with on the part of the company, and that said bonds have been duly made and regularly certified and issued, pursuant to the provisions of this act*; and

every such certificate of guarantee, when so subscribed, shall be a valid and binding obligation of the State of Louisiana in favor of whomsoever shall from time to time be the holder of the bond bearing such certificate, and the State of Louisiana hereby pledges its public faith and credit to the performance of such guarantee according to its terms.

SEC. 12. *Be it further enacted, etc.*, That said company shall cause the survey and location of the whole of said main line of its railroad within the State of Louisiana, to be completed within eight *months after its acceptance of this act*, hereinafter provided for, and shall cause a section of at least forty continuous miles thereof to be constructed, and the rails laid thereon, *within twelve months after such survey and location shall have been made*, and shall cause the whole of its said main line of railroad within the State of Louisiana to be constructed, and the rails laid thereon within three years after such survey and location shall have been made; and in case of the failure of the said company to survey, locate, and construct the said main line of said railroad within the State of Louisiana, in the manner and within the time limited in this section of this act for such survey, location, and construction; the obligation of the State of Louisiana, by virtue of this act, to guarantee the second mortgage bonds of said company (as in this act provided,) *for or upon that portion of the said main line of railroad not constructed within the time limited*, shall cease and determine, and none of said second mortgage bonds, for or upon *that* portion of said main line of railroad, not constructed within the time limited, shall be guaranteed by the State of Louisiana. But no failure of the company to complete said railroad shall affect or forfeit the rights of said company to maintain and enjoy such portions of its railroad as it shall have completed, etc. * * * *

SEC. 14. *Be it further enacted, etc.*, That the said company may accept the terms, conditions, and provisions of this act, at any time within *ninety days from its passage and approval*, etc. * * * * * *

It will be seen from the above extracts that the railroad was authorized to issue $500,000 of second mortgage bonds as soon as it should have completed any section of forty

miles of its main line within the State, that a guaranty by the State of the principal and interest of the bonds was to be endorsed on them by the Governor, and that this endorsement (see section 10) was to make absolute and unimpeachable proof in favor of any holder of the bonds, that all the conditions had been fulfilled which, according to the act, were to precede the endorsement of the guaranty.

Under this act the railroad company built a section of forty miles and issued $500,000 of bonds therefor, among them the bonds in question here, which were thereupon endorsed by the Governor in accordance with section 8 of the act, with his certificate of guaranty. By section 10 of the act it is provided that "every such certificate of guarantee shall be a valid and binding obligation of the State of Louisiana in favor of whomsoever shall from time to time be the holder of the bond bearing such certificate, and the State of Louisiana hereby pledges its public faith and credit to the performance of such guarantee, according to its terms."

The terms of the guarantee are as follows, as provided in section 8, and as found on the bonds, (Rec., 26:) "The payment of the principal of the within bond, when due, and of the interest thereon, as it accrues, is guaranteed by the State of Louisiana, pursuant to the provisions of the act of the General Assembly of said State, authorizing such guaranty." The certificate bears the great seal of the State, and is attested by the Secretary of State. It is dated December 31, 1870.

The bonds themselves are dated July 1, 1870, (Rec., 13,) and recite that the railroad company is indebted in a sum stated, to the State of Louisiana or bearer, payable to the bearer July 1, 1915, with 8 per cent. interest, payable semi-annually; that the principal and interest are secured by a mortgage executed to the Governor of Louisiana as trustee, and which is a second mortgage, and that the *principal of the bonds secured thereby shall become due sixty days after*

default in payment of interest. It is also declared that the bonds shall not be obligatory until guaranteed by the Governor, (Rec., 13,) and that the payment shall be made in New York, (Rec., 12,) or at the option of the holder in London, (Rec., 26.)

On February 21, 1870, there was approved act No. 31, of 1870, acts of 1870 page 55, relative to the New Orleans, Mobile and Chattanooga Railroad Company. This act has no direct application to the present case and we will only say of it, that it provides in section 4, page 58, that the company may construct branch lines, one to Shreveport and one to a point on the river in the parish of West Baton Rouge, and extends to these branches upon certain conditions as to time, the provisions of the act of 1869 above cited, in regard to the guaranty of second mortgage bonds. Sec. 7, page 60, authorizes the extension of the road to Houston, Texas, and promises the issue of State bonds in aid thereof, to the amount of $3,000,000 upon certain conditions.

The next step in the history of the bonds is the passage by the General Assembly of the act of Jan. 24, 1874, establishing the Board of Liquidators, (Acts of 1874, pp. 39–42; Rec., 37–40,) entitled "An act to provide for funding *the obligations of the State* by exchange for bonds, to provide for principal and interest of said bonds, to establish a board of liquidation, to authorize certain judicial proceedings against it," etc.*

The material portions of said act are as follows:

Sections 1 and 2 establish a board of liquidation, and authorize them to issue 40-year bonds to the amount of $15,000,000.

Section 3 is as follows: "*Be it further enacted, etc.*, That the bonds authorized by the section one shall be signed by the Governor, Auditor, and Secretary of State, and the

* The Constitution of Louisiana provides art. 114, "every law shall express its object or objects in its title."

coupons shall be signed by the Auditor and Treasurer; and when so prepared, said bonds shall be exchanged by the board of liquidation for all *valid outstanding bonds of the State and all valid warrants* drawn previous to the passage of this act by the respective auditors of public accounts of the State, on the Treasurer thereof, *except warrants issued by the auditor in payment of the constitutional officers of the State*, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and all valid warrants: *Provided, That the holder of any bond or valid warrant rejected by a majority of said board may apply by petition to the proper court for relief;* and if final judument shall be rendered in his favor against said board, it shall be the duty of said board to fund his said claim in bonds at the rate provided by this act: *And provided further*, That if any member of said board of liquidation shall knowingly audit and fund any illegal claim against the State, he shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than five thousand dollars, and be imprisoned not less than two years, at the discretion of the court: and any person knowingly procuring the same to be done shall be subject to the same penalty."

Section 7 levies a tax of five and a half mills for the payment of the consolidated bonds, and provides "that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar."

Section 8 provides: "That the bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received in exchange for consolidated bonds, be cancelled and destroyed by the said board of liquidation," etc.

Section 12: "*Be it further enacted, etc.*, That all grants of State aid heretofore made, whether of bonds, endorsements, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be, and the same are hereby, repealed

and annulled; nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext."

Section 13: "*Be it further enacted, etc.*, That the entire State debt, prior to the year of our Lord nineteen hundred and fourteen, shall never be increased, directly or indirectly, beyond the sum of fifteen millions of dollars, hereby authorized, it being the intent and object of this act, and of the exchanges to be effected thereunder, to reduce and restrict the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and to agree with the holders of the consolidated bonds to be issued hereunder that said indebtedness shall not be increased beyond said sum during said period."

It will be seen that the title of this act declares its purpose to be, among other things, to fund the valid *obligations* of the State, although in its body it refers to the *bonds* of the State, and certain warrants as being the objects to be funded at the rate of sixty cents on the dollar. It will also be perceived from a perusal of the act, that all indebtedness or liability of the State that was not to be funded, was to be utterly ignored, practically repudiated and left wholly unprovided for in the present and in the future, except warrants for the pay of constitutional officers of the State.

In November, of 1870, an amendment was adopted to the constitution of 1878, as follows, (see Voorhies Civil Code of Louisiana, 1875, p. 32:)

"Article 163. Prior to the first day of January, one thousand eight hundred and ninety, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars."

Under this state of things the relator brought its suit for a mandamus, as permitted by section 3 of the act just above cited, filing its petition in the superior district court of New Orleans, on May 27, 1875, (Rec., 1 and 2.)

The petition alleges that the relator is holder of the sixty $1,000 bonds, with *past due coupons attached*, (see Rec., 25, for coupons first due,) amounting to $12,000, said bonds being endorsed with the Governor's certificate of guaranty and constituting valid obligations of the State. That the board of liquidators has refused to fund said bonds and coupons, and that this refusal is a violation of the compact between the people of the State of Louisiana and the bondholders. Plaintiff thereupon prays for a writ of mandamus, commanding the board to receive the bonds and coupons presented by relator, and to issue therefor consolidated bonds of the State of Louisiana.

The answer filed May 31, 1875, (Rec., 5 and 6,) in the name of the attorney general and of the State, sets up: That the guaranty of the bonds was null and void, and in violation of the State constitution, as it was given after the adoption of the constitutional amendment limiting the State debt to $25,000,000, which limit had been exceeded at the time of the guaranty. That the conditions which, according to the act No. 26, of February 17, 1869, were to precede the guaranty of the bonds by the Governor had not been complied with, as, among other defaults, the first section of forty miles [in respect to which the bonds here in question were issued] had not been completed within the time required by said act, to wit, the 18th January, 1871, and no second section had ever been completed. That on the failure to complete said first section, on or before January 18, 1871, the obligation of the State to guarantee said second mortgage bonds ceased and determined, and any guarantee after such failure was null and void.

A supplemental and amended answer, (Rec., 10,) filed June 22, 1875, set up: That the bonds presented in this case, and the funding of which is claimed, are not included among the obligations permitted to be funded by act No. 3, of 1874, and are not the bonds of the State.

On the trial, the defense was permitted to introduce evi-

dence, (Rec., 27, 28,) that the first section of forty miles had not been completed until some time between the 1st and 5th of April, 1871.

To this the plaintiff excepted, (see p. 10, of Rec.,) on the ground that by the act No. 26, of February 17, 1869, the Governor's certificate of guaranty endorsed on the bonds was conclusive and unimpeachable proof that all the conditions required to precede such guaranty had been fulfilled, and that therefore the State could not be permitted to show that said first section had not been completed until after the time required by the law under which the guaranty was given. The objection was overruled. The plaintiff does not appear to have introduced any rebutting evidence as to the time when the first section was completed, and it will be seen hereafter that in the opinion of the Supreme Court, it is taken as a fact that the forty miles were not completed until sometime in April, 1871; and yet this may be an error, as the Governor's certificate of guaranty on the bonds is dated December 31, 1870, and in the petition for a rehearing, (Rec., 49,) it is said that the forty miles were, in fact, completed in December, 1870.

January 18, 1871, seems to have been admitted by all parties as the date when the railroad company was required to have the first forty miles completed.

It was also admitted that the railroad company was insolvent. (Rec., 11.)

It was shown by the relator that it acquired the bonds in New York, April 23d, 1872, and paid $35,000 for them. (Rec., 27.)

Subsequent to the passage of the act No. 26, of February 17, 1869, (above cited and which authorized the guaranty of the State,) and prior to the Governor's endorsement of these bods, to wit, on November 7th, 1870, a constitutional amendment was adopted limiting the State indebtedness to $25,000,000. (See Voorhies Revised Civil Code of Louisiana, 1875, art. 163 of the Constitution.)

On plaintiff's appeal to the Supreme Court of the State, that Court, in its opinion filed March 7, 1876, held in substance, as follows, (Rec., 42, 46:) The evidence shows that the first section of forty miles was not completed by the 18th January, 1871, the time required by the act; the obligation of the State to guarantee these bonds was conditional; the constitutional amendment of November, 1870, had the effect of depriving the Governor's certificate of the power to make proof that the conditions upon which the guaranty of the State was to be given, had been fulfilled, because, if his certificate retained this power in respect to bonds the conditions of the guaranty of which by the State had not been fulfilled, the giving of such certificate would have been the creation of a new debt—an increase of the State indebtedness beyond the twenty-five millions the limit established by the constitutional amendment, and which had been already reached at its date. All parties are chargeable with notice that the constitutional amendment virtually repealed section 10 of the act No. 26, of February 17, 1869, which was to make the Governor's certificate endorsed upon the bonds conclusive proof that such guaranty was binding upon the State as having been given only upon the fulfillment of the conditions upon which it was by law to be given. The bonds therefore are not valid obligations of the State even in the hands of third parties. Next, these bonds would not be entitled to be funded under the act of January 24th, 1874, because that act only provides for funding the bonds of the State and certain warrants, while these bonds are not bonds of the State, but of the railroad company, and therefore not embraced in the purview of the funding act.

Howell, J., delivered a separate concurring opinion. (Rec., 46, 47.)

The Chief Justice dissented in a separate opinion. (Rec., 47, 49.)

On April 10, 1876, the plaintiff in error filed a petition for a re-hearing, representing in substance—

1. That the court had erred in attributing to the constitutional amendment of November, 1870, the power to impair the legislative contract expressed in the act of 1869, that the Governor's endorsement of guaranty should be conclusive as to its own validity.

2. That the amendment, in the court's own view, could not have the effect attributed to it unless it were the fact that the $25,000,000 limit had been reached, and that the fact was not so, as a consequence of recent decisions of the court itself.

3. The petition claimed that plaintiff would be able to show that the first forty miles of the road [in respect to which the bonds here in question had been guaranteed,] were in fact finished at the date of the guaranty December 31, 1870.

The re-hearing was refused, (Rec., 51.)

The petition for re-hearing was the first paper in the nature of a pleading, in which the claim of a right as against the constitutional amendment could well be formally set up by plaintiff, for plaintiff could not be expected to foresee, when the original petition was filed, what the defence would be, and still less that the constitutional amendment would be so construed by the courts as to make it impair the obligation of the State's contract with the bondholders, expressed in the act of 1869.

Assignment of Errors.

1. The supreme court of Louisiana erred in holding and deciding that the constitutional amendment of November, 1870, had the effect of depriving the governor's certificate endorsed upon the bonds of the power of making conclusive proof in favor of innocent third parties, that the pre-

scribed conditions of the guaranty expressed in such certificate had been fulfilled, and of the power of estopping the State from showing the contrary.

This was to hold and decide that the constitutional amendment could impair the obligation of the contract between the State and the bondholders, expressed in the 10th section of the act No. 26, of February 17, 1869, which makes such certificate conclusive in favor of holders of the bonds.

A State constitution has no such power any more than a statute. (10 Wall., 511, Railroad Company *vs.* McClure.)

2. The court erred in holding and deciding as it indirectly did, that the funding act of January 24, 1874, was not in violation of the United States Constitution, as impairing the obligation of the contract of guarantee between the State and the bondholders, notwithstanding that, as was held, the bonds held by plaintiff in error were excluded from its benefits.

3. The court erred in holding that the guaranteed bonds were not valid obligations of the State.

4. The Court erred in holding that the bonds are not embraced in the funding act.

Argument.

The first assignment of error seems almost too clearly sound to need support. The State had by law, promised those who should become holders of the second mortgage bonds of the railroad, that the guaranty of the State, endorsed thereon, should be conclusive proof that all the preliminary conditions had been complied with; in other words, the guaranty was to be conclusive proof for itself, of its own validity. No constitutional amendment could impair the obligation of this contract. (10 Wall., 511.) And indeed the force attributed to the amendment by the court, depends even in its own view, upon the assumption that the $25,000,000 limit had been reached when the amendment

was adopted. Surely the holders of these bonds, who might be distant foreigners, could not be expected to be informed as to the fact, *not declared by law* of the amount of the State indebtedness—a matter as to which no one in the then condition of the State had any accurate knowledge.

The plaintiff in error was an innocent purchaser.

There is not one word of evidence in the record to show the fact that the $25,000,000 limit had been reached when the guaranty was signed, December 31, 1870. The fact was not one that could be judicially known, and we believe that, in truth, the fact was not so, as has since been ascertained.*

The 12th section of the funding act of January 24, 1874, provides:

"SEC. 12. *Be it further enacted, etc.*, That all grants of State aid heretofore made, whether of bonds, *endorsements*, subscriptions of stock, or otherwise, which have become lapsed or forfeited, be, and the same are hereby, repealed and annulled; nor shall the State hereafter modify, novate, or extend any contract heretofore made for the giving of State aid in any form or under any pretext."

In view of this section, (and section 13 heretofore cited,) and of the general tenor of the act, it is impossible to doubt that it was intended to repudiate and leave utterly without remedy, present or future, all liabilities of the State except such as were to be fundable under the act. But neither a State nor any other debtor has a right to devote all his means to the payment of certain creditors, leaving the rest unprovided for. If a State has made a contract, whereby it incurs a liability, and then passes an act whereby it devotes *all its resources* to the payment of *other debts*, we think that such an act is in violation of the compact by which it incurred the liability in question. Hence, *if* the funding act did *not* include our bonds, it was in violation of

* See statement "E." between pages 88 and 89 of the report of the Auditor of the State of Louisiana for the year ending December 31, 1877.

the Federal Constitution, as being an attempt to impair the obligation of the contract expressed in the guaranty of our bonds by the State. It impaired the obligation of our contract by depriving us of *all* remedy thereon. Our remedy consisted in the expected, and impliedly promised, devotion of a portion of the State's resources to the payment of our bonds. But, by the act, the State revenues are not to be devoted to the payment of any State indebtedness, except the consolidated bonds and certain warrants. Hence, we submit, that if our bonds were not entitled to be funded under the act, then the act is unconstitutional, and the court erred in impliedly holding it constitutional.

The relator, in its petition, set up that the refusal of the board to fund the bonds and coupons presented by petitioner is a violation of the compact between the people of the State of Louisiana and the bondholders under the act of 1869. This was equivalent to setting up that the funding act, if it excluded our bonds, was an act impairing the obligation of the compact between the State and the bondholders, expressed in the act No. 26, of February 17, 1869.

We suppose we may ask this Court to review the decision of the supreme court of Louisiana that our bonds are not within the purview of the funding act, as not being "bonds of the State," but of the railroad company. We claim that they are embraced within the true meaning of the words "bonds of the State." We only say that the act is unconstitutional *unless* they are so, because the act would otherwise be one impairing the obligation of the contract with us as holders of the bonds under the act of 1869.

The question whether the funding act is constitutional or not with regard to the United States Constitution is a Federal question, and in order to decide it, it seems necessary to decide whether or not our bonds are within its purview. To prevent States from passing laws impairing the obligation of contracts is one of the most important functions of this Court, and in cases involving such an attempt, a

deviation has frequently been made from the ordinary rule, that this Court is bound by the construction which a State supreme court has put upon a statute of the State. (5 Peters, 134; 1 Black, 443; 2 Black, 599; 1 Wall., 202; 7 Wall., 16; 8 Wall., 575; 19 Wall., 666.) We think our bonds ought to have been funded under the act, and we hope this Court will decide whether they were entitled so to be under act No. 3 of 1874.

At all events, we have certainly the right to ask this Court to say whether the supreme court of Louisiana was right in holding that our guaranteed bonds are not *valid obligations* of the State, even in third hands, because of the constitutional amendment of November, 1870, and of the assumed fact that the State debt then amounted to $25,000,000. This is clearly a Federal question under the clause forbidding the impairment of the obligation of contracts. The point was decided as distinctly as possible by the supreme court of Louisiana, and is indeed altogether the main ground of its opinion. We suppose it to be unquestionable that on this point the supreme court of Louisiana was entirely wrong. The only doubt is whether the error on this point is sufficient to lead this Court to reverse the judgment and remand the case as not resting on any other sufficient ground. We shall attempt to show that it is a sufficient error. In the first place, the defence that our bonds were not within the purview of the funding act, seems to have been an afterthought with the State attorneys in the court of first instance. They did not set it up at all in their first answer, (Rec., 5 and 6,) but only in their supplemental answer, (Rec., 10.) There were three opinions in the supreme court of Louisiana.

That of the three judges constituting the majority of the court, was more than twice as full on the point regarding the effect of the constitutional amendment, as on this other point as to the intention of the funding act.

Howell, J., delivered a separate concurring opinion, (Rec.,

46, 47,) based solely upon the ground that the bonds were not embraced in the purview of the funding act, and saying not a word to indicate an opinion that our bonds were not valid obligations. We do not see how Judge Howell could have considered himself justified in delivering a separate opinion concurring in the judgment on a single ground, unless he had understood that this ground had not been much considered by the majority. Ludeling, Ch. J., delivered an opinion dissenting *in toto*, saying, among other things, (Rec., 49:) "But it is said that inasmuch as the conditions prece-"dent to signing the certificates by the Governor had not "happened before the adoption of the constitutional amend-"ment limiting the power of the General Assembly to create "debts, the power of the Legislature to create debts had "ceased, because the State debts then exceeded the limit, "and that the act of the Governor in signing the certificates "was a nullity. *What effect the adoption of the constitutional* "*amendment had on the contract between the original parties it is* "*not necessary to consider in this case, but as to bona fide third* "*holders for value it could have none.*

"As already said, the obligation of the contract sprang "from the act of the General Assembly, passed long before "the adoption of the constitutional amendment; and "whether the conditions had then happened or not which "authorized the Governor to sign the certificates, could "have no effect against the innocent holder, *as the bonds on* "*their face import a compliance with the law.* I therefore dis-"sent."

From the whole record we think it will appear to your Honors that the only real and serious basis of the judgment of the supreme court of Louisiana, was the intervention of the constitutional amendment, which was construed to deprive the Governor's certificate of the effect accorded to it by the act of 1869, and to make the guaranty of our bonds invalid. We submit that the Louisiana court was clearly in error on this point; that it was distinctly raised by the

pleadings and distinctly decided, (91 U. S. Rep., 504; 92 U. S. 327,) and that this error calls imperatively for the reprobation of this court, the guardian of the sanctity of contracts. Therefore, we hope and believe that this court will at least declare its opinion that our bonds are valid obligations of the State of Louisiana. With the announcement of an opinion to that effect of this tribunal, we may hope that sooner or later, the State of Louisiana may give us relief in some way even if it shall not do so by *funding* our bonds. To the effect that our bonds are valid obligations we cite only a few of the many decisions of this court that we might cite.

Commissioners of Knox county, Indiana *vs.* Aspinwall, *et als.*, 21 How., 539.
Mercer *vs.* Hackett, 1 Wall., 83.
Town of Coloma *vs.* Eaves, 92 U. S., 484.
County of Randolph *vs.* Post, 93 U. S., 503.
Commissioners of Johnson County *vs.* January, 94 U. S., 202.

As to whether the judgment of the supreme court of Louisiana should be reversed on account of its error as to the validity of our bonds, (we being innocent purchasers,) and its general error with regard to the effect of the constitutional amendment of November, 1870; that question would seem to depend upon this other one, viz: whether the decision of the supreme court of Louisiana, that our bonds are not within the purview of the funding act of 1874, is a sufficient basis to support that judgment. The effect of section 709 of the Revised Statutes was elaborately discussed in Murdock *vs.* City of Memphis, 20 Wall., 590. There the majority of this Court held that section 709 of the Revised Statutes repealed and superseded the 25th section of the judiciary act of 1789; that if a Federal question

appeared in the record upon writ of error to a State court, and was found to have been erroneously decided, the judgment must be reversed unless it appeared that some other matter or issue adjudged by the State court and not of Federal cognizance, was sufficiently broad to maintain the judgment. Three judges dissented, holding that if this court had jurisdiction at all, it had it over the whole case, and must decide every question presented by the record.

We find no subsequent opinion of this Court upon the question. As to whether the point that our bonds are not within the intention of the funding act, it would seem that this point might be sufficient to sustain the judgment in the present case, if it should appear to this Court that the decision thereon was anything more than a makeweight or rider to the main basis of the opinion, and if it should further appear that the point was now of any practical consequence. Even if this point should appear to be sufficient in an ordinary case to sustain the judgment, we hope the Court may see cause to make the present case an exception. For, as we shall show presently, the point as to whether our bonds were fundable or not under the act No. 3 of 1874 has been, by the late legislation and jurisprudence of Louisiana, rendered a matter of no consequence, as it is now a question left to the discretion of the funding board itself; and, therefore, if this Court should reverse the judgment and remand the case, and if the supreme court of Louisiana should then decide that our bonds are valid obligations of the State, such a decision would not require the board of liquidation to fund our bonds; nay more, even if the supreme court of Louisiana should hold that our bonds *ought* to be funded, the matter would still be left to the discretion of the funding board. This will appear from the only *reported* opinion of the *present* supreme court of Louisiana on these questions about fundable bonds. This was delivered in the case of The State *ex rel.* O. J. Forstall *vs.* The Board of Liquidation, 29

Ann., 690.) In this opinion, delivered by Chief Justice Manning, it was said that the act No. 11 of May 17, 1875, (Acts of 1875, p. 110,) had put a ban upon over $14,000,000 of State bonds by declaring them suspicious, and forbidding the board of liquidation to fund them until they should have been declared valid and legal by the supreme court of the State; that the judgment of the supreme court upon *any* bonds of a *certain* class was sufficient to relieve all the bonds of that class from the taint cast by the act of 1875, and to *authorize* the board of liquidation to fund *all the bonds of that class;* but that the board could never be *forced by mandamus* to fund any bonds at all, but was in every case entitled to exercise a discretion. The syllabus reads on this point: "The board of liquidators have a certain discretionary power as to the funding of all State bonds and warrants, and hence cannot be compelled to fund them by the summary process of mandamus."

Under this decision of the present supreme court of Louisiana, the effect of a reversal of the judgment in our case, by the Supreme Court of the United States, followed by an affirmance of the validity of our bonds, would simply be to leave it to the *discretion* of the board of liquidation whether *they shall be funded or not.* Such discretion, however, might, of course, be controlled *as against* the holders of the bonds, upon application of the attorney general of the State for an injunction to restrain the board from funding our bonds as not being entitled to be *funded* under act No. 3 of 1874.

The following is an abstract of the act of 1875, alluded to in the foregoing opinion. Acts of Louisiana of 1875, page 110, extra session, No. 11:

"AN ACT supplemental to act No. 3, approved January 24, 1874, and to provide for testing at the instance of any tax-payer, in the courts of the State, the legality and validity of any items of State indebtedness the legality and validity of which may have been or may hereafter be questioned; to prohibit the board of liquidation under said act No. 3, of 1874, from funding the questionable and doubtful obligations of the State, named or designated in this act, until the same shall have been finally

declared legal and valid by the supreme court of Louisiana, and to provide the necessary means for carrying the provisions of this act into effect; to provide additional members of said board of liquidation, and to repeal conflicting laws."

Section 1 provides, among other things, that the board of liquidation established under act No. 3, 1874, [Rec., 37,] is prohibited from "issuing any bonds in exchange for any outstanding bonds of the State, or warrants drawn previous to the passage of said act by the respective auditors of public accounts of the State on the treasury thereof, forming items of State indebtedness, the legality or validity of which may have been or may hereafter be questioned, until said bonds or warrants shall first, by final decree of the supreme court of the State of Louisiana, have been declared legal and valid obligations against the State of Louisiana, and that the same were issued in strict conformity to law, and not in violation of the constitution of the State, or of the United States, and for a valid consideration," etc.

Section 2 provides "That the following issue of bonds and warrants, so far as the same may be now outstanding, are declared questioned and doubtful as to their legality and validity, and said board of liquidation are hereby prohibited from issuing bonds authorized by section 1 of act No. 3, of 1874, in exchange therefor until the legality, validity, and consideration of the same shall have been tested under the provisions of this act, and a final decree rendered as to their legality, validity, and consideration, to wit: then follows a list of bonds to the amount of many millions, *including the bonds involved in the above decision*, 29 *Ann.*

Section 4 provides "That all laws or parts of laws contrary to or inconsistent with the provisions of this act, are hereby repealed, and that this act take effect from and after its passage."

Our bonds are not included in this act, but your Honors will see further on, that act No. 86, of 1876, approved April 17, 1876, throws a worse "taint" upon our bonds and the

decision, in 29 Annual is clearly applicable to our bonds, under this act.

As we have already insisted, we, as innocent third holders of the bonds here in question, cannot be affected by any lack of compliance on the part of the railroad company with the conditions upon which the act No 26. of 1869 had provided that the bonds should receive the guaranty of the State. We give now an abstract of an act of Louisiana which shows that if there had been any forfeiture of the claim of the railroad company to the guaranty of the State, it was waived as to third parties at least, by the State itself, by act approved April 20, 1871, wherein it offered to give bonds of the State in consideration of a release from its obligation to guarantee the second mortgage bonds of the company.

Acts of Louisiana, 1871, page 211, act No. 95, approved April 20, 1871:

"AN ACT to relieve the State from its obligation to guarantee the second mortgage bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, under an act of the General Assembly, approved February 21, 1870, by the subscription on the part of the State to the capital stock of said corporation, and to regulate the conditions of such subscription, and to secure the construction of the road of said corporation from Vermilionville to Shreveport."

Section 1 of this act authorizes the Governor to subscribe for twenty-five thousand shares of one hundred dollars each of the capital stock of the New Orleans, Mobile, and Chattanooga Railroad Company, and contains a recital that the subscription for stock and the issue of bonds therefor, "herein provided for are intended to extinguish the obliga- "tion of the State to endorse or guarantee the second mort- "gage bonds of said corporation, under the act of the "General Assembly relative to said corporation, approved "February 21st, 1871, and as a discharge of either party "from all obligations for the issue, endorsement, guarantee, "and security of said mortgage bonds as provided in the "fourth section of said acts," etc.

Section 2 provides for the issuance for the payment of said subscription of eight per cent. bonds of the State.

As appears by the testimony of John G. Gaines, (Rec., 27,) we bought our bonds a little more than a year after this legislative sanction given to the validity of similar bonds. Surely, we had a right to suppose that if any forfeiture had occurred of the right to the State guaranty, when our bonds were in fact guaranteed, December 31, 1870, such forfeiture would not be insisted on, but was waived.

Finally, and in order that the Supreme Court of the United States may fairly judge of the whole *animus* of the proceedings in respect to our bonds, (sustained under Governor Warmoth, denounced under Governor Kellogg, and half the one and half the other under Governor Nicholls,) we give here an abstract of the latest acts known to us on the subject.

Amendment No. 2, of 1874, to the State constitution, provides that whenever the debt of the State shall have been reduced below $25,000,000, the constitutional limit shall remain at the lowest point reached, until it shall be reduced to $15,000,000, beyond which it shall not be increased; and that taxation, except for school purposes, and except in case of war or invasion, shall never exceed twelve and a half mills on the dollar. (See Record, p. 41.) The amendments set out in the record, were ratified at the general election, held November 2, 1874. (See titles of act 58, regular session of 1877, p. 77; and of act 77, of extra session of 1877, p. 113, of the acts of 1877.)

Act No. 86, approved April 17, 1876, (acts of Louisiana 1876, p. 130,) entitled "An act to prohibit the funding and the issue of consolidated bonds in exchange for any portion of the unlawfully guaranteed bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, and of the two and a half millions of bonds issued unconstitutionally for stock in said company."

The preamble recites that the railroad company did not

comply with the conditions of act 26, approved February 17, 1869; that the State executive "did, in disregard of "the terms of the act, and of the constitutional limitation "of the State debt, endorse eight hundred and seventy-five "thousand dollars of said second mortgage bonds, and "issue two millions five hundred thousand dollars of State "bonds to said company for stock in lieu of a guarantee of "bonds, when the right and obligation to guarantee bonds "had ceased and determined," etc. And that "efforts are now being made, under the forms of law, to perpetuate these illegal claims upon the State by procuring the funding of these illegally indorsed and unconstitutionally issued bonds." And, thereupon, section 1 prohibits the board of liquidation, constituted by the second section of act No. 3, approved January 24, 1874, (Rec., 37,) "from issuing any consolidated bonds of the State in exchange for the second mortgage guaranteed bonds of the New Orleans, Mobile, and Chattanooga Railroad Company, or any of said bonds, it being hereby declared and proclaimed that said bonds were endorsed by the Governor of this State illegally and without authority, under the act, and, therefore, said unlawful endorsement could not and did not create a debt of the State which is fundable."

The section (1) then goes on to declare the same prohibition against the two and a half millions of State bonds issued under the act No. 95, approved April 20, 1871, declaring that the State had received no consideration whatever for the issue of the bonds: "that the obligation of the "State to endorse bonds in favor of the said company had "ceased to exist before the passage of said act No. 95 of "1871: that said act could not, and did not, create a debt "of the State which is fundable: and that the funding of "said unlawfully issued bonds would violate the letter and "spirit of said act No. 3, approved January 24, 1874, im"pair the State's credit, and thereby lessen the value of "State securities to the prejudice of the holders thereof."

Section 2 enacts: "That all laws and parts of laws con-
"trary to or consistent with the provisions of this act are
"hereby repealed, and that this act shall take effect from
"and after its passage."

Act No. 58, regular session of 1877, page 77:

This act reorganizes the board of liquidation, and amends and re-enacts the act No. 3 of 1874, which is set out in the record herein, (page 37.) There appears to be nothing in it material to the present inquiry.

But the next act, No. 77 of the extra session of 1877, (Acts of 1877, page 13,) is more important, for it enacts:

Section 4: That sections one and two of act No. 11, approved May 17th, 1875, pp. 111, 112, and 113, [hereinbefore cited, p. 21,] and act No. 86, approved April 17, 1876, pp. 130, 131, [just cited herein,] are in nowise affected, impaired, or abrogated by act No. 58 of 1877, but, on the contrary, "remain in full force, are in no manner repealed, and must be observed and be complied with by the board of liquidation."

The opinion of the supreme court of Louisiana, in the present case, was filed March 27, 1876, about three weeks prior to the passage of the act of April 17, 1876. As your honors will perceive, this act No. 86, of 1876, reaffirmed in 1877, is a furious legislative tirade, a stump speech in fact, against our bonds. There is no difficulty in perceiving that all this bluster and dust was designed to conceal the skeleton of sheer repudiation. The foregoing is the latest act of Louisiana on the subject under what were in effect, *war* administrations of that State. At its date, and for many years previous, all the powers of the Government of that State were in the hands of persons declared by its property holders, to be alien to them in sympathy and in concern for their honor and credit. Now, a revolution of affairs has occurred, and the State is in the hands of the

property holders of the State. The whole country is looking with anxiety or curiosity to see whether they will manfully bear the acts of their past governmental agents, however pernicious, as their *own* misfortune, or whether they will shirk the burden themselves only in order to throw it upon innocent shoulders.

If this judgment shall be reversed, the present *regenerated* supreme court of Louisiana will have an opportunity, if their conception of law will permit, to aid in restoring the credit of the State by declaring these bonds to be valid obligations of the State of Louisiana. Under the recent legislation it is not to be expected that the funding board will dare to fund the bonds, but if the Supreme Court of the United States, and the supreme court of the State of Louisiana, shall concur in declaring that our bonds are valid obligation of the State of Louisiana, we may confidently hope for relief sooner or later. There is no serious obstacle to a reversal by this Court, leading to a result fortunate for us and for the State, except the *shadow* of a reason, viz: that under act No. 3, of 1874, our bonds may not have been entitled to be funded. It would not make a particle of difference now, whether our bonds were or were not intended to be included in the act of 1874. Whether that was or not the intention of the act of 1874, our bonds now stand excluded by the legislation of 1876 and 1877.

Our reliance must probably be upon the good sense and sense of justice of the Legislature of the State. But it would be idle to rely or base the least hope upon the exertion of any such sentiments by a State Legislature if a judgment of its own court, declaring our bonds invalid, even in the hands of innocent third parties who gave valuable consideration for them, shall be affirmed by the Supreme Court of the United States.

A brief of A. Pitot, Esq., is submitted herewith.

Respectfully submitted,

EDWARD JANIN,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 215.

THE STATE OF LOUISIANA, EX REL. CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF LIQUIDATION OF THE STATE OF LOUISIANA, AND THE STATE OF LOUISIANA, DEFENDANTS IN ERROR.

Writ of error to the Supreme Court of Louisiana.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

EDWARD JANIN,
Of Counsel for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

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SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

We beg leave to add a few words to our first brief, in order to complete the survey of the jurisprudence of the Supreme Court of the State on questions arising upon the funding act of January 24, 1874, (Rec., 37–40,) by citing several decisions which will appear in vol. 30, Louisiana Annual Reports, which, however, will not be printed and ready for delivery until about January 1, 1879. As it has been stipulated to submit this case upon briefs, it seems unadvisable to wait for the reception here of that volume.

The majority opinion of the Supreme Court of Louisiana in the present case, delivered by Mr. Justice Wyly, (Rec., 43–46,) confines itself, on pages 43, 44, 45 and the top of page 46 of the record, to the solitary point that these bonds

are not valid obligations of the State of Louisiana, because their guaranty by the Governor was in contravention of the constitutional amendment of November, 1870.

But it follows up its reasoning on this point by the declaration (Rec., 46, third paragraph from the top) that "we are *also* of the opinion the funding of these bonds is not provided for by the funding act, being Act No. 3 of the acts of 1874."

It bases this opinion as to the intention of the funding act *solely* upon the requirement of section 8 (Rec., 39) of the act, that all the bonds to be funded and exchanged shall, as fast as received, be "cancelled and destroyed," etc., saying: "If the funding of these bonds had been contemplated the board of liquidation would not have been required to cancel and destroy them, and thereby defeat the possibility of recovery against the makers of said bonds personally, as well as the right resulting from the mortgage." Counsel for appellee makes the same point and bases it upon the same solitary ground. (See his first brief, page 9.)

Now, the opinion of the *present* supreme court of Louisiana, in the case of "Le Sassier & Binder *vs.* The Board of Liquidation," completely overthrows and overrules the *sole* and *single* ground upon which proceeds the opinion in the present case, in holding that the funding act did not intend to include our bonds.

The case of Le Sassier & Binder was a suit to compel the funding of certain bonds issued to the "Consolidated Association of the Planters of Louisiana." The Board of Liquidation had refused to fund the bonds on the ground that the obligation of the State was only that of surety, and that the remedy of the bondholders ought to be exhausted against the assets of the Planters' Association, before application to have the bonds funded. The court held, however, that whatever might be the character of the State's liability to the association, it was, as to *third parties*, that of a principal debtor, and that the bonds were within the provision

of the funding act, and ought to be funded. Evidently, however, the court considered that the State was entitled to recoup itself out of the assets of the association, and as the cancellation of the bonds would have obstructed the enforcement of this right, it forbade the cancellation, and held as follows:

"In only one particular the judgment of the lower court must be amended. The 8th section of the act of 1874, provides, 'that the bonds and valid warrants outstanding at the time of the passage of said act, shall, as fast as they are received in exchange for consolidated bonds, be cancelled and destroyed by the Board of Liquidation,'" &c. (See Rec. herein, p. 39.)

"This instruction applies and refers to exclusively the bonds and warrants which, when exchanged for consolidated bonds, are the useless evidence of a prior claim reduced by the exchange, the balance due on which, after the reduction, is witnessed by a new instrument, *but it does not refer and should not be applied to* any of the warrants and bonds which, as those sued upon, shall, after the exchange, *constitute the evidence of a claim of the State against other parties of its subrogation to every right securing said claim*, and which, for that reason, should be preserved and delivered to the proper authorities of said state. It is, therefore, ordered, adjudged, and decreed, that the Board of Liquidation be and it is hereby enjoined and prohibited from destroying, after their exchange, any of the bonds mentioned and described in plaintiff's proceedings."

Thus the case of Le Sassier & Binder clearly overrules the opinion in the present case, that the act of 1874 must be construed to exclude our bonds because of the requirement of cancellation. The true construction is that the requirement is not universal and that it does not apply to bonds like ours, on which, after exchanging them, the State would have a remedy over.

This case is likewise authority for another point maintained by us, viz.: that our bonds are "bonds of the State"

within the meaning of the funding act. The Court say in Le Sassier & Binder: "According to our code, suretyship is an accessory promise by which one binds himself for another *already bound*," etc.

Now the theory of the Supreme Court of Louisiana, in our case was, that the guaranty by the Governor, if it had any effect, made the State a surety for the railroad company.

But upon looking at the copy set out in the record of one of our bonds it will be seen, (Rec., p. 13, near the top,) that the railroad company expressly provided against liability on its part antecedent to the assumption of a liability by the State. The provision in the bond is as follows, (p. 13:)

"This bond shall not be obligatory *until* the certificate of guaranty hereon printed shall have been subscribed by the Governor of the State of Louisiana, the great seal of said State thereto affixed, and the same attested by the signature of the Secretary of State of said State."

It would seem then that according to the jurisprudence expressed in Le Sassier and Binder our bonds are, *as between the State and the third holders*, clearly "bonds of the State" within the meaning of those words as used in the funding act, and that Ch. J. Ludeling was right in saying in the present case in his dissenting opinion, (Rec., 48):

"For the purpose of giving credit to the bonds intended to raise money to build a railroad within the State, the State put its name upon the back of said bonds *at the time they were executed*, and thereby *promised unconditionally to pay said bonds*. Therefore, to all intents and purposes, these bonds must be deemed the bonds of the State, and within the intendment of the funding act. If valid, these bonds unquestionably form a part of the bonded debt of the State, which it was the purpose of the General Assembly and of the people to fund."

After the decision of Le Sassier and Binder, comes that of The State *ex rel.* New Orleans Pacific Railway Company *vs.* Francis T. Nichols, Governor, *et al.* This was a proceed-

ing, in *mandamus*, against the governor and other officials, to compel the issuance of State bonds in aid of the Pacific Railway, authorized by act of the General Assembly, (Acts of La. of 1878, p. 105.) The defense was that the act was unconstitutional—as contravening the constitutional amendment of 1874, (Rec. 41,) limiting the State indebtedness to $15,000,000, and because it was obnoxious to the constitutional prohibition against contracting a debt exceeding $100,000, without at the same time providing adequate means for paying it, etc. The constitutional amendment limiting the State debt was proposed to the people by legislative action, approved Jan. 24, 1874, (which was also the date of approval of the funding act, see Rec. 40 and 41, herein,) and was subsequently ratified at the polls.

The proposition of the constitutional amendments and the passage of the funding act, says the Court, followed immediately upon the submission to the Legislature of the Auditor's report, dated Jan. 1, 1874. The Court then cites passages from this report, from which it appears that at its date the total indebtedness for which the State was actually liable, amounted to $24,356,785.72; that the market value of this debt, say at 60 cents on the dollar, was about *fourteen and a half millions;* that by adding to the actual or present indebtedness of $24,356,785.72, the amount ($4,803,683.33) of certain bonds, on which the State was *contingently* liable, and a further sum stated as the miscellaneous debts of the State, a sum total was reached (January 1, 1874,) of about $30,000,000, as the actual *and contingent* debt of the State.

The Court says that the plan of consolidation evidently excluded the contingent debt of the State, and was limited to the actual debt of $24,356,785.72, which, if funded at the rate as fixed by the funding act, of 60 cents on the dollar, would create a consolidated debt of *less* than $15,000,000.

The Court then holds that the constitutional limitation of the State debt did not prohibit the creation of a *contingent*

liability; that the bonds authorized in aid of the Pacific Railway created such contingent liability *only*, and that the State had provided, as required by the constitution, adequate ways and means for the payment of its bonds when they should become due, by requiring the railway company "to deposit its own first mortgage bonds with the Auditor, and to pledge them to the State, for the guarantee of the payment of the State bonds, which shall be issued, to an amount exceeding by one-fourth the amount of the State bonds, which shall be delivered to the company."

In the course of its opinion, the Court gives a statement of the present (1878) debt of the State, *exclusive* of the bonds styled "not fundable," "as compiled by the present Auditor," as follows:

Consolidated debt, January 1, 1878	$11,279,780 66
Outstanding old bonds, when funded	392,280 00
Outstanding general warrants, when funded	113,232 55
	$11,785,293 21

Now, the pertinency of the above opinion to the present case, is just this: The force attributed in the opinion in our case (Rec. 42, 46,) to the constitutional amendment of November, 1870, depends, even in its own view, upon the *assumption* that the $25,000,000 limit had been reached when the amendment was adopted; and, consequently, prior to the Governor's indorsement of our bonds. We suggested in our first brief, (pp. 13, 14,) that this, even if it were a fact, could not be expected to be known to third purchasers, and that, moreover, the assumption was probably an error of fact. And the foregoing opinion in the case of the Pacific Railway bonds shows the error clearly. It declares that the auditor's report of January 1, 1874, shows that the actual debt of the State at that time, (three years after the date of the Governor's indorsement, December 31,

1870, see Rec. 26,) was *less* than $25,000,000, viz: $24,356,785.72.

And the opinion in the Pacific Railway case shows another fact too, viz: that there is plenty of room for our bonds within the $15,000,000 limit of the consolidated bonds, since the auditor's report for 1878, shows that only $11,279,780.66 of consolidated bonds have been issued, and that the "outstanding old bonds," (*excluding* those styled "not fundable,") would, if funded, amount to only $392,280, and the outstanding general warrants, to only $113,232.55.

This opinion seems to admit that the opinion in Le Sassier & Binder was erroneous in decreeing the funding of bonds which created only a *contingent* liability on the part of the State.

But, nevertheless, the decision in Le Sassier & Binder has been affirmed in two cases decided since the decision in the Pacific Railway Case. These two cases are those of Edward J. Forstall's Sons *vs.* The Board of Liquidation, No. 803, and same *vs.* same, No. 804. (Docket of the Supreme Court of Louisiana.) We suppose the opinions in these two cases will appear in vol. 30, La. An. Rep., but *possibly* they may not, as they were delivered at the sittings at Monroe, between which place and New Orleans there was a rigid quarantine during the recent prevalence of the yellow fever.

In No. 803 (Docket Supreme Court of La.) it is said;

"These bonds and coupons are of the same class and series with those in the case of Le Sassier & Binder *vs.* The Board of Liquidation, decided by us in March last, and not yet reported. In obedience to the view taken by this court in that case the board was proceeding to fund the bonds, &c., in question in this case, and had actually taken all the preliminary steps for that purpose, when they stopped, as we are informed, in consequence of their interpretation of a doctrine, and the opinion of the majority of the court in the case of the New Orleans Pacific Railroad Company *vs.* Francis T. Nicholls, Governor, *et al.*, recently de-

cided by us in New Orleans. We do not, however, consider this important under the view we have taken of the present case otherwise." * * * * "And as was said in the Le Sassier & Binder case, whatever may be the relations belations between the State and the association, *as between themselves*, by no possible interpretation can the State be considered less or other than the principal and, indeed, the sole obligor upon the bonds as to the holders thereof. The fact that the act made them *transferable* by the indorsement of the president and cashier of the association no more modified or changed the obligation of the State than if they had been drawn payable to bearer, or had been the obligations of any individual or private person." * * * * * "The fact that they [the bonds in this case of Forstall's sons] were at one time classed by the auditor in his report as contingent liabilities of the State, could not and does not change their former obligation. Neither does the *amount of issue of consolidated bonds* provided for in the funding bill, of which it need only be remarked *that if found insufficient, that is a matter under legislative control*, and at all events no such ground of defense is set up in the present case. *So far as appears and we are informed by the Auditor's report, there is no obstacle on this score* to the funding of relator's bonds and coupons." * * * * * "The judgment below made the mandamus peremptory. It is correct and is affirmed."

We hope we have shown that under the more recent jurisprudence of the Supreme Court of Louisiana, the sole ground upon which the decision in this case reposes, in holding that our bonds were not intended to be included in the funding act is erroneous.

If this hope is well founded, then the last shadow of a reason for not reversing the judgment herein is dissipated, the judgment will be reversed and the case remanded with or without instructions as shall seem fitting to the Supreme Court of the United States in a case involving the exercise of its highest functions in protecting the sanctity of contracts. As we have stated in our first brief, legislation enacted *since the decision herein*, precludes any expectation that

the Funding Board will venture, *while such legislation remains in force*, to fund our bonds, but we may confidently anticipate that if the stigma of *invalidity* be removed, returning prosperity will bring wiser counsel, and that the Legislature will make provision for the protection of the State's honor and the rights of the bondholders.

Respectfully submitted,

EDWARD JANIN,
Of Counsel for Appellant.

Note Pamphlet numbers 7 & 10 Opinions Sup Ct La containing opinions in the cases of Le Sassier & Bixler and of the N O Pacific Railway, are now in the Law Library

To appear in 30th La. Ann. Rep.

No. 7,069. Supreme Court of the State of Louisiana. Le Sassier & Binder *vs.* The Board of Liquidation. Appeal from the third district court for the parish of Orleans.

SUPREME COURT OF THE STATE OF LOUISIANA.

Clerk's Office, New Orleans, March 18, 1878.

LE SASSIER & BINDER *vs.* THE BOARD OF LIQUIDATION. } No. 7,069.

Appeal from the Third District Court for the Parish of Orleans.

Mr. Justice DeBlanc delivered the opinion and decree of the court in the words and figures following, to-wit: Plaintiffs are the holders of three bonds, which, they allege, are exchangeable, and which they have sought to exchange for consolidated bonds, under an act adopted by the legislature and approved on the 24th of January, 1874. The bonds thus held by plaintiffs were issued nearly half a century ago, on the 31st of December, 1828, under an act of the legislature of the State. They are signed by P. Derbigny, then the Governor of Louisiana, and countersigned by F. Gardère, then the Treasurer of said State.

In its answer to plaintiff's demand, the Board of Liquidation denies that those bonds are fundable, and, in bar of the action brought to compel it to fund them, pleads the prescription of five and ten years. In the printed argument filed in its behalf, the attention of the court is called to only one fact, and that is that there is no proof of the genuineness of the signature of the payee of these bonds. In its report of the 1st of October, 1877, the Board bases its refusal to exchange them on the ground that the liability of

Supreme Court US
No 215.

Citizens' Bank
vs
Board of Liquidation

RECENT OPINIONS OF THE SUPREME COURT OF LOUISIANA.

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the State thereon is *exclusively that of a surety*, and that, as a surety, the State is entitled to the benefit of discussion of the property of the principal debtor, and, in the opinion of the Board, that principal debtor is the Consolidated Association of the Planters of Louisiana.

We here transcribe in full one of the three bonds held and declared upon by plaintiffs:

"KNOW ALL MEN BY THESE PRESENTS, That THE STATE OF LOUISIANA acknowledges to be indebted unto the *President, Directors and Company* of the Consolidated Association of the Planters of Louisiana in the sum of ONE THOUSAND DOLLARS, which sum the said State of Louisiana promises to pay, in current money of the UNITED STATES, to the order of said President, Directors and Company, on the thirtieth day of June, one thousand eight hundred and forty-three, with interest at the rate of FIVE PER CENTUM PER ANNUM, payable half-yearly, at the place named in the endorsement hereof, viz.: On the thirtieth June and thirty-first December, of every year, until payment of said principal sum.

"IN TESTIMONY WHEREOF, the Governor of the State of Louisiana has signed, and the Treasurer of said State has countersigned, these presents, and caused the seal of the State to be affixed thereto, at NEW ORLEANS, this thirty-first day of December, in the year of our Lord one thousand eight hundred and twenty-eight.

"(Signed) P. DERBIGNY, *Governor.*
"(Countersigned) F. GARDERE, *Treasurer.*"

The endorsement on the bonds is in these words: "We, the undersigned, Manuel Andry, President, and Jacques Louis Prevost, Cashier of the Consolidated Association of the Planters of Louisiana, *for value received*, do hereby endorse and transfer the within bond, of one thousand dollars, bearing interest at the rate of five per cent. per annum, to the order of ———, *and do hereby bind the State of Louisiana*, and President, Directors and Company of the Consolidated Association of the Planters of Louisiana, *to pay the said interest half-yearly*, on the thirtieth day of June, and the thirty-first day of December of each year, in the City of London, at the counting-house of Baring Bros. & Co., at the exchange of four shillings and sixpence sterling per dollar, upon presentation and delivery of the dividend warrant, in the margin hereof, *and also do bind the said President, Directors and Company to reimburse the principal at the same place, at the ex-*

change of four shillings and three pence sterling per dollar, upon presentation and delivery of this bond on the day when this bond becomes due.

"(Signed) MANL. AUDRY, *President.*
"J. L. PREVOST, *Cashier.*"

We have found annexed to the originai bond which accompanies the transcript the following agreement, to wit:

"Know all men by these presents, that the Managers and Directors of the Consolidated Association of the Planters of Louisiana, by virtue of an act of the State of Louisiana, approved February 26, 1866, and entitled 'An act providing for the final liquidation of the Consolidated Association of the Planters of Louisiana,' hereby engage and bind the said association, through me, their undersigned and au a ized agent, to pay in New Orleans, at their banking ho the amount remaining due on bond of the State of Louisiana, C, No. 464, dated 31st December, 1828, and due 30th June, 1843, in the following mode and proportions, viz.:

"One hundred dollars on 30th June, 1870.
"One hundred dollars on 30th June, 1872.
"One hundred dollars on 30th June, 1874.
"One hundred dollars on 30th June, 1876.

"Against delivery of the respective warrants hereunto annexed, which will serve as receipts; and this bond shall be considered as a proof of the debt from the State of Louisiana and the Consolidated Association to the holder, for no other sum than the aggregate amount of such warrant as may remain in the possession of said holder. The last installment will be paid only on delivery of the original bond.

"The Consolidated Association of the Planters of Louisiana hereby engages also to pay, regularly at its office in New Orleans, the half-yearly dividend warrants annexed hereto, at their respective maturities, and solemnly declares that nothing in this document or arrangement is intended to release the State of Louisiana from its engagements towards the holder of the bond C, No. 464, nor shall be construed to release or discharge any right of the holder to the securities given by the mortgages granted under and by virtue of the act of incorporation of the said bank, and acts amendatory thereto, approved by the Governor of the State of Louisiana.

"In testimony whereof, the agents and representatives of the Managers and Directors of the Consolidated Association

of the Planters of Louisiana, holding full power to bind said association, has signed these presents in Amsterdam, this sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-six."

(Signed) A. SCHREIBER, *Agent.*

The counsel representing the board contends that the general denial filed in its name, puts at issue the title of plaintiffs to the bonds they hold, and that, as there is no proof of the genuineness of the signature of the payee of said bonds, the disputed title has not been established, and on that ground they ask the reversal of the judgment of the lower court.

For at least four reasons that defense is untenable:

1. In their form, and indorsed as they are, those bonds are really payable to any bearer thereof. 10 R. R., 128; 3 R., 195; 3 N. L., 291, 392.

2. The board did not contest, but from the tenor of their report tacitly acknowledged the title of plaintiffs.

3. No adverse title is mentioned, either in the pleadings or the printed argument, and none was otherwise suggested. 8 N. L., 509; 2d A., 97, 441; 5 N. L., 512; 9 M. R., 469; 4 L., 430; 5 L., 48; 14 L., 254; 13 L., 13.

4. The general issue pleaded by defendant is equivalent to an admission of the genuineness of the signatures, which, though not acknowledged, is not absolutely denied, not even in the counsel's brief; and, besides, when an act *sous seing privé* is permitted to be read in evidence without objection, proof of its execution is waived. 8 A., 312; 12 A., 340.

Is plaintiff's action barred by prescription? The State not being suable, except with her consent, the course of the prescription invoked by defendant's counsel was effectually suspended; and, were it otherwise, the State, under act No. 92 of 1843, took possession of and held in pledge, until recently, all the assets of the Consolidated Association of the Planters of Louisiana, and that pledge was a standing acknowledgment by the State of an obligation which, tacitly or expressly, was ten times acknowledged by the Legislature in ten different acts, and more particularly by those of 1847 and 1866, in and by which her representatives authorized the extension of the time of payment of those bonds. See Acts No. 19 of 1828, of 1835, 1836, 1842, 1843, 1845, 1847, 1848, 1853, and 1866.

Do the three instruments held by plaintiffs, presented to the board and now under consideration, witness in the

language of the acts of 1874 and 1875, outstanding and valid bonds of the State issued in strict conformity to her laws, not in violation of her constitution or of the Constitution of the United States, and for a legal consideration? They do, and, with its undoubted impartiality, the board itself has so declared; that declaration is published in their report: "We wish it distinctly understood that we do not deny the eventual liability of the State, in case the assets of the bank and of the stockholders prove insufficient after legal discussion, according and in conformity to the full measure of the obligation contracted, and we fully recognize that the State is pledged to redeem all promises made and all liabilities incurred: but beyond this we hold that the State has no legitimate authority to extend her liabilities, and, therefore, we believe in this instance that the bondholders must look to the assets pledged to their reimbursement, see that they are properly and legally administered and applied, and should these prove inadequate, they, in the meantime, having pursued all their legal remedies then apply to the State for the fulfillment and redemption of her promises.

Respectfully submitted.

"(Signed.) LOUIS BUSH, *Chairman*,
" LOUIS A. WEITZ,
" ALLEN JUMEL."

The board is mistaken as to the character of these obligations, the very terms of which repel the construction contended for in its report. "The State of Louisiana acknowledges to be indebted unto the president, directors, and company of the Consolidated Association of the Planters of Louisiana in the sum of one thousand dollars, which sum the State of Louisiana promises to pay to the order of said president, directors, and company, at the place named in the indorsement hereof, etc." Such words do not, cannot, constitute, embrace, or evidence an accessory obligation, do not, cannot, create or describe an accessory promise. Those words are the studied and clear expression of a principal obligation of an unconditional promise.

Can we add to those terms? Can we arbitrarily presume that the State did not intend to bind herself, as, in law and in fact, she is bound by the terms of her contract, that, when she said, without reservation, I acknowledge to be indebted, I promise to pay, it meant, though she said the very reverse, indebted as a surety, the surety of one who, in the instru-

ment, is recognized as a creditor, and pay in case my recognized creditor fails to do so. This would be a perversion of the very letter of the contract submitted to our consideration.

According to our code, "suretyship is an accessory promise, by which one binds himself for another *already bound*, and agrees with the *creditor* to satisfy the obligation, if the debtor does not. In this instance, if the State be but a surety, who, when she bound herself as such, was already bound as the principal debtor? Who, then, was the creditor with whom the pretended surety agreed to satisfy the obligation, if the unknown and nameless debtor did not? The most careful inspection and perusal of the instrument would not have left the impression that the consolidated association, therein represented as a creditor, was in reality the principal obligor, that the State, who alone acknowledged to be indebted, and who alone promised to pay, was but a surety, and of whom? Of its recognized creditor, of the party in whose favor the bond was subscribed, to whose order it was payable.

In its report the Board, referring to the endorsements on the bonds, said: "Leading to the same result, and confirming the views we have taken of the question, we refer to the subsequent dealings of the parties, to-wit: the bank and the bondholders, acting on the principle that she was merely a surety, and wishing to maintain her faith intact, the State gave her consent by act 100, of 6th April, 1847, p. 77, sec. 4, to an extension by the bank of the bonds for six, nine, twelve, fifteen, and eighteen years, and by act No. 38, of February 26, 1866, on the same terms as then existed, for a period of ten years and no more, (p. 66, sec. 1,) thus waiving, as a surety, the objection which might otherwise have been urged by her that the creditors, the bondholders, had done acts which impaired her rights, or had given a prolongation without her consent. In these two acts nothing is left to inference, for in both it is the managers and directors of the consolidated association who are authorized to negotiate for the extension of the bonds, and it is they who, with the bondholders, agreed to the prolongation granted, with the consent of the State, given as aforesaid."

The endorsement on those bonds does in no way change or impair the unqualified and unconditional obligation of the State to satisfy the said bonds. It adds to the State obligation that of the consolidated association. It mentions

the balance due on what is therein called "the bonds of the State of Louisiana," and specially provides that it shall not be construed as releasing the State of Louisiana, or discharging any right acquired by the holder of those bonds under the act of incorporation of the consolidated association, or any act commendatory thereto.

Whatever may be, as between the State and the consolidated association, the liabilities of the latter to the former, as to third parties and on those bonds, the State was, and has ceased to be, a principal debtor, and, as to third parties, cannot be legally regarded as the surety of one who, in those bonds, is represented as its creditor.

The obligations sought to be exchanged by plaintiffs bear signatures and dates which repel suspicion. They are, beyond any doubt, a just, an honest debt of our State, and should be funded.

In only one particular the judgment of the lower court must be amended. The 8th section of the act of 1874 provides: "That the bonds and valid warrants outstanding at the time of the passage of said act shall, as fast as they are received in exchange for consolidated bonds, be canceled and destroyed by the board of liquidation," &c.

This instruction applies and refers to exclusively the bonds and warrants which, when exchanged for consolidated bonds, are the useless evidence of a prior claim reduced by the exchange, the balance due on which, after the reduction, is witnessed by a new instrument; but it does not refer, and should not be applied, to any of the warrants and bonds which, as those sued upon, shall, after the exchange, constitute the evidence of a claim of the State against other parties, of its subrogation to every right securing said claim, and which, for that reason, should be preserved and delivered to the proper authorities of said State.

It is, therefore, ordered, adjudged, and decreed that the board of liquidation be, and it is hereby, enjoined and prohibited from destroying, after their exchange, any of the bonds mentioned and described in plaintiff's pleadings.

It is further ordered, adjudged, and decreed that every right and action of the State of Louisiana, in, on, or concerning said bonds, whether said right and action were acquired before, or be acquired by and after the exchange of said bonds, be and they are expressly reserved.

It is lastly ordered, adjudged, and decreed that, as amended by this decree, the judgment of the lower court is affirmed, with costs.

A true copy.

Clerk's office, New Orleans, September seventh, eighteen hundred and seventy-eight.

[SEAL.] ALF'D KERNAN, *Clerk.*

No. 7,128.

The STATE *ex rel.* NEW ORLEANS PACIFIC RAILWAY COMPANY *vs.* FRANCIS T. NICHOLLS, Governor, *et al.*

The opinion of the court was delivered by Manning, C. J.:

The General Assembly, at its last session, passed an act authorizing the loan to the relator of the bonds of the State, to an amount not exceeding two millions of dollars, the first issue of which should be for the sum of two hundred and fifty thousand dollars only, and providing for subsequent issues upon certain conditions being complied with. (Acts 1878, p. 105.)

The Governor, in approving this act, signified his intention to provoke a judicial decision upon the constitutional questions involved, and accordingly refused to sign and issue the bonds, whereupon the relator took this proceeding by mandamus to compel the Governor, the Auditor of Public Accounts, and the Secretary of State, *to issue* two hundred and fifty thousand dollars of bonds of the State in accordance with, and for the purposes expressed in the act.

The respondents aver that the act is unconstitutional, in that it violates the amendment of the constitution, which limits the State debt to *fifteen millions* of dollars, and because the constitution prohibits the legislature to contract a debt exceeding one hundred thousand dollars, except in certain specified emergencies, of which this is not one, without, at the same time, providing adequate means for the payment of the current interest, and of the principal, when it shall become due; and further, because it is an attempt to use the taxing power of the State to aid a private enterprise.

The funding act was approved January 24, 1874. Its object and purpose was to reduce the floating and bonded debt of the State, and to consolidate it by authorizing the

issue of bonds, which should be exchanged for all valid outstanding bonds theretofore issued, and for all valid warrants drawn previous to its passage, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and valid warrants. The 13th section enacted, that the entire State debt prior to the year 1914, shall never be increased beyond fifteen millions of dollars, the intent and object of this reduction and consolidation being to restrict the whole indebtedness of the State to a sum not exceeding that sum, and to agree with the holders of the consolidated bonds that this indebtedness shall not be increased beyond that sum during the period mentioned in the act. On the same day an amendment to the constitution was approved, to be thereafter submitted to the people for ratification, declaring that the consolidated bonds, to be issued by authority of, and in conformity to the legislative act of same date, created a valid contract between the State and the holders of them, which the State should in nowise impair; and that whenever the debt of the State shall have been reduced below twenty-five millions of dollars, the constitutional limit shall remain at the lowest point reached, beyond which the public debt shall not thereafter be increased, and that this rule shall continue in force until the debt is reduced to fifteen millions, beyond which it shall not be increased. (Acts 1874, pp. 39–43.)

This amendment has become a part of the constitution by its subsequent ratification by the voters at the polls.

This legislation—the funding bill, and the act proposing the constitutional amendment—followed immediately upon the submission to the General Assembly of the auditor's report, dated January 1, 1874, wherein is this statement and information:

"*The present market value of the actual debt of the State, funded and floating, is about fourteen and a half millions.* I have the assurance of large bondholders, at home and in Europe, that if the limit of our debt by constitutional amendment should be fixed at fifteen million dollars, they would accept a new consolidation bond at its face value, and surrender in exchange their old obligations (bonds of all classes and outstanding warrants) at their market value, say about sixty cents on the dollar. The plan of this funding of the State debt is being prepared in detail, and will be submitted for action at an early day during the present session."

The sequence of the events, and the conformity of the legislation to the idea of the report, show that the "plan" thus referred to is the act shortly afterwards passed.

The same report states the debt of the State at that time to be—

Bonds outstanding January 1, 1874	$22,433,800 00
Auditor's warrants (old)	1,565,702 08
Auditor's warrants (new)	225,051 22
Certificates of indebtedness	131,785 42
	$24,356,785 72

In a tabular statement appended to the report and forming one of the exhibits, the "total of the bonded debt of the State for which the State is actually liable," is fixed at the figures above set forth, and there are then itemized other bonds for which the State is contingently liable, amounting to $4,803,683.33, which, with a sum stated as the miscellaneous debts of the State, make up a sum total of thirty millions of dollars. In exact figures, it is that sum, less eight thousand two hundred and seventeen dollars and seventeen cents.

The funding of that sum at the rate suggested by the auditor, and adopted by the legislature, will create a consolidated debt of eighteen millions of dollars. The funding of the sum stated by the auditor as the actual debt of the State will create a consolidated debt of a little less than fifteen millions.

It is obvious that the plan both of the auditor and the legislature, embraced only the latter sum, or, in other words, that it excluded the bonds loaned to the Citizens' Bank and the Consolidated Planters Association, which amounted in round numbers to the sum above stated, as debt for which the State was only contingently liable. We have, therefore, to consider whether the expression in the act of 1874, which restricts the whole indebtedness of the State to a sum not exceeding fifteen millions of dollars, and the expression in the constitutional amendment, which declares that when the debt has been reduced to that sum it shall not be increased beyond it, so control and define the meaning of the legislature in passing the one, and of the people in adopting the other, as to constitute an unqualified inhibition of any increase of the debt of the State, after the

whole, both actual and contingent, has reached the prescribed limit.

A rule of statutory construction, the soundness of which is attested by long use, and the frequent and continued approbation of judicial tribunals, is that the intent of the lawmaker is to be ascertained by inquiring what was his motive in legislating; what was the mischief sought to be avoided or remedied, and what the object or good to be attained. Contemporaneous history may be resorted to, and the discussions attendant upon the progress of the legislation through its various stages, as well as the project of the law, in order to discover the meaning and scope of the law itself. Subsequent legislation, also upon the same subject, or upon cognate matter, is useful as furnishing an interpretation of previous words, and in fixing their import.

Now, if we separate the expressions referred to from the act, and ignore the general tenor of the law, and disregard, or refuse to consider, its history and the circumstances attendant upon and which provoked its birth, so to speak, there could be given but one construction of the phraseology of the thirteenth section of the funding act. And that construction is opposed by the history of the legislation, by the intent of its framers, as disclosed at every anterior stage of its progress, by the reasons and motives which were assigned as inducements for its adoption, and by arithmetical demonstrations of the basis upon which the consolidated debt was calculated.

It is impossible that the contingent liability of the State upon the bonds loaned to the Citizens' and consolidated banks should have entered into the plan, because funding them with the other liabilities will produce a sum total greatly exceeding that fixed by the act and the amendment. It is equally impossible that the State should have contemplated and provided for the compulsory funding of bonds upon which her liability had not attached, but which must necessarily be contingent for many years after the whole process of funding should have been completed. And we shall advert to this feature further on. In addition to this we know the exact figures, taken as a basis, upon which new bonds, issued at the rate adopted by the funding bill, will produce the debt limit, also adopted. You cannot reach the end set in view by the funding legislation by any other road than that mapped out in the programme of its

originators. Diverge from it in search of contingent liabilities at the extremity of one of its by-paths, and you can never reach the end, because you get back into it burthened with a load which cannot be constitutionally put off, and which inexorably stays further progress.

An examination of the action of the bondholders and of the funding board will exhibit a conformity of view as to their understanding of the funding act. This is a summary of the State debt on the first day of the present year, exclusive of the bonds styled "not fundable," as compiled by the present auditor:

Consolidated debt, January 1, 1878	$11,279,780 66
Outstanding old bonds when funded	392,280 00
Outstanding general warrants when funded	113,232 55
	$11,785,293 21

and this is the total amount of consols after every bond and warrant has been funded, the funding of which was contemplated under the theory we have adopted.

But it is said one of the holders of the bonds loaned to the Consolidated Planters' Association has not acted on this theory, and we have encouraged others to follow his example. Le Sassier & Binder have obtained a decree authorizing the funding at sixty cents on the dollar of three thousand dollars of those bonds. The questions presented in the present case were not considered by us in that case. But suppose all the holders of these bonds should apply to have them funded. The whole amount thus loaned and outstanding, including those in the Le Sassier case, is $506,350.00. Exchange these for consols at the funding rate and the total debt of the State, exclusive of the loan to the Citizens' Bank, is, when funded, twelve millions and eighty-nine thousand one hundred and three dollars and twenty-one cents. ($12,089,103.21.)

If the whole of the two millions contemplated by the act of 1878 shall be issued, the debt will be below the constitutional limit, unless the figures and tabulated statements of the auditing officers of the government are incorrect.

It is urged upon the part of the respondents that the question whether the bonds loaned to the property banks are to be considered as a part of the indebtedness of the State has been already answered adverse to the theory of

the relator, in the opinion read by our immediate predecessors in Solomon *ex.* Graham, 23 Annual, 402. But that case was decided in 1871, before the project of funding was conceived, before the "plan" which eliminated these bonds from the debt to be funded was formed or considered, and of course before that plan was perfected by legislative and constitutional enactment.

The limit then prescribed to the debt was twenty-five millions, and manifestly the word was there used, and was then construed to include all that could be included in that designation, present or prospective. There had not then been any suggestion or scheme to separate the public debt into two classes, one of which was to be funded and the other not. The constitutional amendment containing that limitation was not preceded by any act or legislative declaration, shewing that what was meant by the debt of the State was other than its whole indebtedness, however created or arising. The inhibition then was that no future debt should be created that would increase the sum total beyond twenty-five millions. The latter inhibition was that no present debt should be funded which would increase the debt, intended to be consolidated, beyond fifteen millions.

So far from that position militating against the position of the relator, it goes to confirm the idea that the latter amendment had that in view, and in adopting, as a basis of calculation, the actual debt, to the exclusion of the contingent debt, had in mind the fact that the latter had been judicially construed to be a part of the general debt, and did not provide for it to be funded because it was contingent.

The funding act came under the review of the Supreme Court of the United States in 1875, when the Court said: "It is contended that the State has deprived itself of the right to issue any bonds at all, except the consolidated bonds created by the funding act, to be exchanged for outstanding debts already existing." And this proposition was not mentioned approvingly, although it was not ruled on, being unnecessary in that case, but in the concluding part of the same opinion the Court says in reference to the disposition to be made of the unissued portion of consols: "It may be objected to this view that the bondholders of the State ought not to be forever precluded from making such other disposition of the unissued consolidated bonds as may be beneficial to it, without being injurious to those

who have accepted such bonds. If such a state of things should arise, after due time and opportunity shall have been given to test the practicability of carrying out the scheme, it will undoubtedly furnish proper ground for modified legislation, having due regard to the rights already vested." Board of Liquidation *v.* McComb, 2 Otto, 531.

Due time has now been given to test the practicability of carrying out the scheme. Four years have passed since the funding bill became a law, and we now know that nearly all the holders of the State's bonds have not refused to come in, but have consented to the sacrifice, and sufficient time has been given to the holders of the residue of the fundable bonds and warrants for them to come in and share the advantages of the scheme. We also know that the holders of the bonds loaned to the Citizens' Bank will not come in, since their bonds are not a part of the debt fundable in consols. Shall the State be forever precluded from making any other disposition of the unissued consolidated bonds that may be deemed beneficial to it by the legislature.

There is not wanting legislation evincing an animus to prevent any part of the fundable debt, which shall remain unexchanged for consols, from being redeemed or the interest upon it paid. It would be difficult to devise an enactment more stringent or more comprehensive than that which deprived any officer of the State of the power to assess, collect, or enforce the payment of any tax for the payment of any of the bonds or the interest thereon, which were contemplated to be funded by the act of 1874, which prohibited to all courts and judges, or any tribunals, to entertain or take jurisdiction of suits to enforce the payment of such tax, which declares that such tax shall not be recorded by any officer so as to operate a lien, and if recorded, that it should not operate a lien—which abrogated all penalties for the non-payment of such tax, and declared that the bonds of tax collectors should not recover such tax, and if they collected it, neither themselves nor their sureties should be liable to pay it to any person. And in the same act, to ensure the payment of the new consolidated bonds, principal and interest, and to attract the confidence of the old bondholders to them, they were exempted from the provisions of these copious and all-embracing prohibitions. (Acts 1874, p. 94.)

We have before said that controversy of the policy or impolicy, the good or bad faith of the funding act, is closed,

because of the numerous and grave complications that would arise upon and from the opening of that question. (Lord Cecil *vs.* Board of Liquidation, *ante*. 35.) We regard the faith of the State as irrevocably pledged to the payment of her consolidated bonds, issued under authority of that act, and to the payment of such other bonds as may be issued under the sanction of the decree we shall make herein. The contract with the holders of these bonds, is one which, in the language of the constitutional amendment, the State can by no means, and in no wise, impair. This utterance, fortified by judicial sanction, contains the double assurance to the bondholders, that their securities shall not be impaired or imperilled, and to the tax payers, that their burthens shall not be augmented beyond the constitutional limit, until the actual debt of the State has reached the limit of fifteen millions of dollars, exclusive of the contingent liabilities which were not embraced within the funding act and the constitutional amendment, it is competent for the legislature to provide for the issuing of bonds as a loan to such enterprises as fall within its constitutional power, provided other requirements are complied with, and we shall now proceed to the inquiry whether these requirements have been complied with in the present instance.

Has the legislature complied with the constitutional requirement of providing in the law creating the debt adequate ways and means for the payment of the current interest, and of the principal when it shall have become due. The relator is required by the act to deposit its own first mortgage bonds with the auditor, and to pledge them to the State, for the guarantee of the payment of the State bonds, which shall be issued, to an amount exceeding by one-fourth the amount of the State bonds delivered to the company. The whole amount of bonds to be issued by the company is restricted to five millions, one-half of which will be thus pledged for the redemption of the State bonds, in the event the full issue of the latter authorized by the act is made, and this restriction is evidently made to prevent the weakening the security which the State has required for her protection. Fifty thousand dollars of the State bonds are to be extinguished annually by the company, commencing five years after the completion of the line to Shreveport, and this annual rate of extinguishment to continue until the near approach of the maturity of the State bonds, when they are to be extinguished in such annual proportion as shall ensure

the payment and cancellation of the whole of them by their maturity.

It may be that these salutary precautions will not completely ensure the object for which they are made. Human affairs depend upon too many contingencies to enable the wisest individual, or the most prudent public body, to concert a scheme, which is to be practically worked out in the future, and provide with unerring certainty for the attainment of specific results. The legislature has provided the adequate means in the constitutional sense.

The third and last objection to the constitutionality of the act is, that the State has not the right to assume or create a debt, which must eventually be met by the use of her taxing power, in aid of an enterprise of this kind.

The argument is, that this enterprise is private, as contradistinguished from public, and hence that the public money cannot be rightfully appropriated to its aid. The discussion of this question was at one time practically useful, as well as theoretically interesting. Nearly all the State, if not quite all, have been at one time or another violently agitated by this controversy, and when the arena of conflict was transferred from the hustings to the courts, each side found ample grounds to fortify it in its opinions. There was rarely an unanimous court in pronouncing a judgment for or against the power, and opinions are yet divided between the disputants as to what should have been the judgment pronounced. But, as a practical question, it no longer has any interest. The battle over it has been fought, and has been lost by those who denied the possession of the power. A judge, who took pains to collate the information, says the legislation has been sustained in nineteen out of twenty-one States. Swayne, J., in Tallcot case, 19 Wall., 666.

It may now be regarded as settled doctrine in this country that no tax can be legally authorized for a purpose which is not public. It is not, however, quite plain always what is a public purpose, but the great preponderance of judicial judgments is in favor of the competency of a legislature, in the absence of constitutional restraints, to authorize loans to railroad companies, and to provide for their payment by the issue and sale of bonds. But a statute which authorizes the issue of bonds, to be redeemed by taxation, in aid of classes or individuals, or in aid of manufacturing enterprises of individuals or private corporations, is void, because it falls within the meaning of the rule which prohibits aid

to a private as contradistinguished from a public purpose, although the local public might be benefitted thereby in a collateral way. Dillon Munic. Corp., § 586, 591; Monograph Munic. Bonds, 2 South. Law Rev., 438.

The bonds authorized by the act of March 11, 1878, fall within the former class, and the provision for issuing them, under the conditions therein imposed, is not repugnant to the constitution: Therefore,

It is ordered, adjudged, and decreed, that the judgment of the lower court is avoided and reversed, and that the mandamus be made peremptory, order the signing of bonds of the State to the amount of two hundred and fifty thousand dollars, and their delivery to the relator upon compliance by the relator with the conditions of the above-named act, and that the respondents pay the costs hereof.

A true copy from the 10th number of volume 30 of the annual reports, from page 980 to 988.

ARMAND PITOT.

SYLLABUS BY THE REPORTER.

The funding act of the legislature, approved January 24, 1874, contemplated in its purpose and embraced in its provisions only the actual debt of the State. It excluded the contingent liability of the State embodied in the bonds loaned to the Citizens' Bank and the Consolidated Planters Association.

In the interpretation of a law the motion of a law-maker, and the meaning and scope of the law, may be sought for in contemporaneous history, in the discussions attendant on the progress of the legislation, and in subsequent legislation on the same or on cognate matters.

The constitutional amendment limiting the debt of the State to fifteen millions of dollars only restrains the legislature from increasing the actual or present debt of the State beyond that sum. It does not inhibit any increase of the contingent liability of the State.

Until the actual debt of the State has reached the limit of $15,000,000 it is competent for the legislature to provide for the issuing of bonds as a loan to such enterprises as fall within its constitutional power, provided that in the act creating the debt adequate ways and means are provided

for the payment of the current interest, and of the principal when it shall become due.

The act of the legislature of March 11, 1878, authorizing the issue of bonds of the State in aid of the New Orleans Pacific Railway Company, is not repugnant to the constitutional provision prohibiting aid to a private purpose.

A true copy.

ARMAND PITOT.

No. 7,128.

The STATE *ex rel.* NEW ORLEANS PACIFIC RAILWAY COMPANY *vs.* FRANCIS C. NICHOLLS, GOVERNOR *et al.*

Dissenting Opinions.

Egan, J: However important the interests to be advanced by the decree in this case, as manifested by legislative action, I am unable to agree with the conclusions arrived at by a majority of the court. In my opinion the fact that the property bank bonds are secured collaterally to their full amount does not make them any less a part of the debt of the State, nor their obligation upon the State any less binding. It may be that those securities may prove ample for their redemption, or they may not. In this day of wonderful reduction of values, whereby fortunes heretofore deemed large disappear as if by magic, and contrary to all reasonable human calculation, we are daily taught the instability of all securities—in what situation, let me ask, will the State be placed if to-day we authorize and decree the issuance of two millions of new bonds of the State, and to-morrow or a few years hence, she is called upon to redeem her solemn unconditional promises to pay the property bank-bonds. What barrier and what defence is to be interposed? Surely not the existence of these new obligations of the State which swells its liabilities beyond the constitutional limit; and, if not, then the practical consequences of the violation of its contract and of the constitutional amendment will have to be met by the State amid many embarrassments. Should a contest arise between the holders of the consolidated bonds and those of this new issue, notwithstanding the present decree, what must be its inevitable result? But, however much these considerations might in-

duce us to pause at the possibility of the State and the holders of its obligations being placed in such embarrassing position, that is not the question now. The sole question is whether the contemplated issue in favor of the relator will be in excess of the limit placed upon the State debt by the constitutional amendment of 1874.

In my opinion the reasoning of the court and its decision in the case of the State *ex rel.* Salomon & Simpson *vs.* Graham, Auditor, 23 An., 402, is as applicable to-day as when it was rendered as to what constitutes "the State debt," and is unaffected by the fact that the late amendment has reduced the limit of that debt below that then existing. It was then held that the property bank bonds constituted and must be counted and considered as part of the debt of which they have all the characteristics, form, and obligations. The opinion and decree even of the present bench in the case of Le Sassier & Binder *vs.* The Board of Liquidation is in accordance with the same view. That suit was brought under the provisions of the funding bill upon some of these very property bank bonds, and by our decree we declare them to be debts of the State possessed of all the qualities and characteristics which entitle them to be funded, and it was not even attempted to be urged as a defense that they were not fundable for the reasons now urged. In point of fact we know from current history that the same view is taken by the funding board itself since the last quoted decision. If so, then what becomes of the argument derived from the the amount of consols provided for by the funding bill and the amount of the State debt as estimated at the time of its adoption? Whatever the errors in those estimates the terms of the amendment were made no less absolute, and the interests of those dealing with the State cannot be affected by such error in the motive for the self-imposed curb on its power to incur debts. If argument is to be drawn from that source and from the acts and motives of the legislature and the circumstances which gave birth to and attended the legislation on this subject, why would we shut our eyes to the historic and important fact in that unhappy period in the history of the State which originated the necessity and led to adoption of the funding scheme, many and large issues of bonds were made which were known to be outstanding and included in the estimates of the amount of the State debt, which were more than suspected of having

been fraudulently or illegally issued, and many of which were contested by the attorney general and auditor, and that large classes and amounts of bonds were in the opinion of the legislature itself, as declared in the supplemental bill, proscribed and prohibited from being funded without prior judicial inquiry and sitting of their character and basis. From these facts it is evident that the legislature expected, and had good reason to expect, that enough of what was estimated as forming part of the State debt would be rejected on such judicial inquiry to reduce it when funded within the fifteen-million limit, or even below it; but which possessing on their face all the characteristics of obligations of the State, and being supported by the form of legislation are and must continue to be included in all estimates of State liabilities until the contrary is decided.

Again, what was the funding bill but a new contract tendered by the State to its creditors, which they might, or might not, accept for reasons satisfactory to themselves; as, for instance, in the case of the holders of the property bank bonds, because they might consider the existing security sufficient for their ultimate redemption to their full amount. That this was a reasonable and probable view of the matter is made the more manifest by the fact that up to this time, after the offer and opportunity had remained open for several years, less than twelve millions of the consolidated bonds have been applied for or issued. This, then, disposes of the argument drawn from the relative inequality of the estimated State debt with the addition of the property bank bonds and the amount of consolidated bonds provided for. But aside from the foregoing considerations, the language of the constitutional amendment placing a limit upon the amount of the State debt is plain and unambiguous, and its letter cannot be disregarded under the pretext of pursuing its spirit. C. C., Art. 13. The amount of issue was, however, under legislative control, should that provided for be found insufficient.

I cannot, therefore, assent to the force of the arguments arrayed in the opinion of the majority of the court, drawn from their view of what was the legislative intention in proposing, or that of the people in adopting, the constitutional amendment. In point of fact, however, it is well known that the relative amount of debt and new issue of bonds provided for was little known or considered by the people

at large in adopting the amendment, and that they were readily inclined to place a check in the form of a constitutional amendment upon the spoliations which, under the forms of law, they had been of late so freely subjected. They accepted the amendment according to its plain letter, and the evident meaning of its language. Is it, then, surprising if the large class of foreign and non-resident holders of the State bonds have accepted, or should interpret, the funding bill and the constitutional amendment to mean what it says, that "the whole State debt" should not be increased beyond fifteen millions before the time fixed in the amendment? This view alone seems to me consistent with the preservation of the public faith, upon which the whole credit of the State rests, and which it is all important to keep sacred. I am, however, consoled by the reasoning by which a majority of the court have reached their conclusions, and by the consequence of that reasoning and view of the question, that it manifests careful regard for the public faith and obligations, and only determines that the limit of fifteen millions of State debt, as contemplated by the amendment, has not been reached, and not that it shall be overstepped: and also by the fact that the bonds to be issued to the relator do not and cannot participate in the benefits secured to the consolidated bonds issued, or to be issued, under the funding bill, as they are themselves not fundable.

It has been argued that the State has the power and right to withdraw its offer to fund, which cannot be required to remain always open. Concede that this is so, it is sufficient answer to say that the State has not withdrawn its offer, but on the contrary still continues the functions of the funding board, and makes appropriation for its expenses: and that, so far from the discontinuance of funding, it has gone on since the passage of the act relied on by the relator, and is going on as we write. The fact then still remains that the consolidated bonds are so secured and guarded that they should, and no doubt will, with a reviving prosperity, to which it is hoped the project of relator will largely contribute, soon be ranked among the best of public securities. Believing, however, as I do, and as the court has decided, that the property bank bonds are absolute and unconditional, and not, as argued, mere contingent obligations of the State, and the amount of the (it being conceded counting them outstanding) State debt at the time of the passage

of the act providing for the issuance of the bonds for the benefit of relator was, or would thereby, be made in excess of the constitutional limit, I dissent from the decree in this case.

DeBlanc, J.—I concur in the dissenting opinion of Mr. Justice Eagan.

A true copy of the dissenting opinion from pp. 988 to 991.

ARMAND PITOT.

Nos. 803, 804.

SUPREME COURT OF THE STATE OF LOUISIANA,
CLERK'S OFFICE, MONROE, *July* 12, 1878.

EDM. J. FORSTALL'S SONS
vs.
THE BOARD OF LIQUIDATION, the State of Louisiana, Intervenor. | No. 803.

Appeal from the Third District Court, Parish of Orleans.

Mr. Justice Egan delivered the opinion and decree of the court in the words and figures following, to wit:

This is a proceeding by mandamus to compel the funding of certain bonds of the State of Louisiana, issued in aid of the Consolidated Association of the Planters of Louisiana, under act No. 19, of 1828, and of certain interest coupons amounting, at the time of the application, to $79,927.50. These bonds and coupons are of the same class and series with those in the case of Le Sassier & Binder *vs.* The Board of Liquidation, decided by us in March last, and not yet reported. In obedience to the view taken by this court in that case the board was proceeding to fund the bonds, &c., in question in this case, and had actually taken all the preliminary steps for that purpose, when they stopped, as we are informed, in consequence of their interpretation of a doctrine, and the opinion of the majority of the court in the case of the New Orleans Pacific Railroad Company *vs.* Francis T. Nicholls, Governor, *et al.*, recently decided by us in New Orleans.

We do not, however, consider this important under the view we have taken of the present case otherwise. In the

Le Sassier & Binder case we copied one of the bonds in the opinion, and it is unnecessary now to do so again. By reference to that case and to the act under which they were issued, it will appear that the bonds in question are the absolute and unconditional promises of the State of Louisiana, to pay the same, and *that the State is the sole obligor* in the bonds. They are signed by the Governor, Derbinger, and countersigned by the Treasurer, Gardère, on behalf of the State, in accordance with the terms of the act under which they were issued, and by no one else, and as was said in the Le Sassier & Binder case, whatever may be the relations between the State and the association, *as between themselves*, by no possible interpretation can the State be considered anything less or other than the principal, and indeed the sole obligor upon the bonds as to the holders thereof. The fact that the act made them transferable by the indorsement of the president and cashier of the association, no more modified or changed the obligation of the State, than if they had been drawn payable to bearer, or had been the obligations of any individual or private person. Indeed it is contended, and it appears with great show of reason, that the indorsement under the act by those officers for the mere purpose of transfer of title, created no obligation on the part of the association, as appears to have been expressly decided by the Supreme Court of the United States in two similar cases quoted in the brief of relator's counsel, to wit: Curran *vs.* Arkansas, 15 How., 317; and Chamberlain *vs.* St. Paul, 2d Otto, 390.

If the association is bound it would seem to be not upon the bonds in question, but by virtue of a new and independent contract or obligation assumed by it in favor of the holders by way of guarantee of their payment in order to give them greater currency and credit no doubt, and which was not only assumed subsequent to the execution of the bonds by the State, but formed no part of this obligation, as will be seen by reference to the opinion in the Le Sassier & Binder case, into which it also is copied. There is no obligation by which the State binds herself for another already bound to satisfy the obligation in case that other does not. There are no accessory but original and principal obligations—not payable contingently, but absolutely and at all events. They are unquestioned and unquestionable debts of the State of Louisiana, possessing all the requisites and

characteristics as we held in the Le Sassier & Binder case, which entitle them to be exchanged for consolidated bonds under the provisions of the funding bill and its amendments. No distinction is made against them by the broad and general terms either of the act or of the constitutional amendment. By the third section of the original funding act it is provided that upon application by the holders, new consolidated bonds shall be exchanged by the Board of Liquidation for all valid outstanding bonds of the State. Those now under consideration are both valid and outstanding. The fact that they were at one time classed by the auditor, in his report, as contingent liabilities of the State, could not and does not change their former obligation. Neither does the amount of issue of consolidated bonds provided for in the funding bill, of which it need only be remembered that if found insufficient, that is a matter under legislative control, and at all events no such ground of defence is set up in the present case. So far as appears, and we are informed by the auditor's report and this record, there is no obstacle on this score to the funding of relator's bonds and coupons.

It has been argued with great earnestness that there are very marked distinctions between the bonds issued to the Consolidated Association and those issued to the account of the Citizens' Bank, a matter we are not called on to determine in this case, however. The judgment below made the mandamus peremptory. It is correct and is affirmed.

Mr. Justice Spencer delivered the following dissenting opinion in this case:

For the reasons stated in the case of "State *ex rel.* N. O. Pacific R. R. Co. *vs.* F. T. Nichols *et al.*," I dissent from the decree in this case.

In my opinion, it is a matter of no moment whether the bonds issued to the Planters' Association were or not absolute liabilities of the State, or merely contingent and conditional. It is clear to me, from the proceedings of the Legislature in adopting the funding bill, and in proposing the amendments of the constitution relative thereto, that the Citizens' Bank bonds and the Planters' Association bonds were excepted and excluded from the funding scheme. The report of the auditor, referred to in the Pacific R. R. case, classing these Planters' Association bonds as "contingent" liabilities, does not, of course, make them "contin-

gent," and in that decision we refer to them as "contingent" simply as a convenient mode of designating those bonds which were excluded from the proposed funding process; and because, under this application, the figures in the auditor's report, which served and was adopted as the basis of the funding bill and the accompanying amendments, I hold that these bonds cannot be funded, because the Legislature did not intend to embrace them in the scheme, and not because they are or not in fact contingent debts of the State. This question was not raised or brought to our notice in the Le Sassier & Binder case, and in that case we simply decided that these bonds were absolute, valid debts of the State, and I still think they are: but for the reasons stated they are not fundable.

Mr. Chief Justice Manning delivered the following dissenting opinion:

I concur in the dissent of Mr. Justice Spencer.

I, Talbot Hillman, clerk of the Supreme Court, holding session at Monroe, La., do hereby certify the above and foregoing to be a true and correct copy of the opinion and decree rendered by said court in the case of Edw. J. Forstall's Sons *vs.* The Board of Liquidation, the State of Louisiana, intervenor, and of the dissenting opinion of Justice Spencer and Chief Justice Manning, at its July, 1878, term, at this place.

In testimony whereof, I hereunto sign my name officially, and affix my seal of office, this the 10th day of July, A. D. 1878.

(Signed) TALBOT STILLMAN,
Clerk Supreme Court.

A true copy from the original copy, Sept. 28, 1878.
A. PITOT.

SUPREME COURT OF THE STATE OF LOUISIANA,
CLERK'S OFFICE, MONROE, *July* 12, 1878.

EDW. J. FORESTALL'S SONS
vs.
THE BOARD OF LIQUIDATION,
The State of Louisiana, Intervenor. } No. 804.

Appeal from the Third District Court for the Parish of Orleans.

Mr. Justice Eagan delivered the opinion and decree of the court, in the words and figures following, to wit:

This is a proceeding to have declared fundable thirty-six bonds of the State of Louisiana for the sum of one thousand dollars each, besides interest, indorsed in blank and issued under the provisions of act No. 19 of 1828 of the Legislature of Louisiana, and being of the same character, class, and series with those embraced in the cases of Le Sassier and Binder *vs.* The Board of Liquidation and the State *ex rel.*, the present plaintiffs, *vs.* the same defendants, State of Louisiana, intervener, No. 803 of the docket of this court just decided.

The judgment of the court below was in favor of the plaintiffs and against the defendants and intervenor. For the reasons assigned in the Le Sassier and Binder case and in case 803 just decided the judgment appealed from in this case was correct, and is affirmed.

The dissenting opinion read by Mr. Justice Spencer in case No. 803, and which was concurred in by Chief Justice Manning, is applicable to this case.

I, Talbot Stillman, clerk of the Supreme Court, holding sessions at Monroe, La., do hereby certify the above foregoing to be a true and correct copy of the opinion and decree rendered by said court in the case of Edw. J. Forstall's Sons *vs.* The Board of Liquidation, State of Louisiana, intervenor, at its July, 1878, term, at this place.

In testimony whereof, I hereunto sign my name officially, and affix my seal of office, this the 12th day of July, A. D. 1878.

(Signed) TALBOT STILLMAN,
Clerk Supreme Court.

A true copy from the original copy, Sept. 28, 1878.
A. PITOT.